# LETTERS

OF

# PACIFICUS AND HELVIDIUS,



ON THE

# PROCLAMATION OF NEUTRALITY OF 1793,

BY

ALEXANDER HAMILTON, (PACIFICUS,)

AND

JAMES MADISON, (HELVIDIUS,)

TO WHICH IS PREFIXED

THE PROCLAMATION.

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## PROCLAMATION OF NEUTRALITY,

*April* 22, 1793.

Whereas, it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherland, of the one part; and France on the other—and the duty and interests of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial towards the beligerent powers.

I have therefore thought fit by these presents, to declare the disposition of the United States to observe the conduct aforesaid towards those powers respectively; and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition.

And I do hereby also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said powers, or by carrying to any of them those articles which are deemed contraband by the modern usuage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further, that I have given instructions to those officers, to whom it belongs, to cause prosecutions to be instituted against all persons who shall, within the cognizance of the courts of the United States, violate the laws of nations, with respect to the powers at war, or any of them.

In testimony whereof, I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the City of Philadelphia, the 22d day of April, one thousand seven hundred and ninety three, and of the Independence of the United States of America, the seventeenth.

GEORGE WASHINGTON.

# LETTERS

OF

# PACIFICUS AND HELVIDIUS,

ON

# THE PROCLAMATION OF PRESIDENT WASHINGTON.

## PACIFICUS.

BY ALEXANDER HAMILTON.

### No. I.

As attempts are making, very dangerous to the peace, and, it is to be feared, not very friendly to the constitution, of the United States, it becomes the duty of those who wish well to both, to endeavour to prevent their success.

The objections which have been raised against the proclamation of neutrality, lately issued by the president, have been urged in a spirit of acrimony and invective, which demonstrates that more was in view than merely a free discussion of an important public measure. They exhibit evident indications of a design to weaken the confidence of the people in the author of the measure, in order to remove or lessen a powerful obstacle to the success of an opposition to the government, which, however it may change its form according to circumstances, seems still to be persisted in with unremitting industry.

This reflection adds to the motives connected with the measure itself, to recommend endeavours, by proper explanations, to place it in a just light. Such explanations at least cannot but be satisfactory to those who may not

themselves have leisure or opportunity for pursuing an investigation of the subject, and who may wish to perceive, that the policy of the government is not inconsistent with its obligations or its honour.

The objections in question fall under four heads:

1. That the proclamation was without authority.
2. That it was contrary to our treaties with France.
3. That it was contrary to the gratitude which is due from this to that country, for the succours afforded to us in our own revolution.
4. That it was out of time and unnecessary.

In order to judge of the solidity of the first of these objections, it is necessary to examine what is the nature and design of a proclamation of neutrality.

It is to *make known* to the powers at war, and to the citizens of the country whose government does the act, that such country is in the condition of a nation at peace with the belligerant parties, and under no obligations of treaty to become an *associate in the war* with either, and that this being its situation, its intention is to observe a correspondent conduct, by performing towards each the duties of neutrality; to warn all persons within the jurisdiction of that country, to abstain from acts that shall contravene those duties, under the penalties which the laws of the land, of which the *just gentium* is part, will inflict.

This, and no more, is conceived to be the true import of a proclamation of neutrality.

It does not imply, that the nation which makes the declaration, will forbear to perform to either of the warring powers any stipulations in treaties which can be executed, without becoming a *party* in the war. It therefore does not imply in our case, that the United States will not make those distinctions, between the present belligerant powers, which are stipulated in the 7th and 22d articles of our

treaty with France; because they are not incompatible with the state of neutrality; and will in no shape render the United States an *associate* or *party* in the war. This must be evident, when it is considered that even to furnish *determinate* succours of ships or troops, to a power at war, in consequence of *antecedent treaties having no particular reference to the existing quarrel*, is not inconsistent with neutrality: a position equally well established by the doctrines of writers, and the practice of nations.*

But no special aids, succours, or favours, having relation to war, not positively and precisely stipulated by some treaty of the above description, can be afforded to either party without a breach of neutrality.

In stating that the proclamation of neutrality does not imply the non-performance of any stipulations of treaties, which are not of a nature to make the nation an associate in the war, it is conceded that an execution of the clause of guaranty, contained in the eleventh article of our treaty of alliance with France, would be contrary to the sense and spirit of the proclamation; because it would engage us with our whole force, as an *auxiliary* in the war; it would be much more than the case of a definite succour, previously ascertained.

It follows, that the proclamation is virtually a manifestation of the sense of the government, that the United States are, *under the circumstances of the case, not bound* to execute the clause of guaranty.

If this be a just view of the force and import of the proclamation, it will remain to see, whether the president, in issuing it, acted within his proper sphere, or stepped beyond the bounds of his constitutional authority and duty.

It will not be disputed, that the management of the af-

*See Vatel, Book III, Ch. 6, Sec. 101.

airs of this country with foreign nations, is confided to the government of the United States.

It can as little be disputed, that a proclamation of neutrality, when a nation is at liberty to decline or avoid a war in which other nations are engaged, and means to do so, is a *usual* and a *proper* measure. *Its main object is to prevent the nation's being responsible for acts done by its citizens, without the privity or connivance of the government, in contravention of the principles of neutrality ;** an object of the greatest moment to a country, whose true interest lies in the preservation of peace.

The inquiry then is, what department of our government is the proper one to make a declaration of neutrality, when the engagements of the nation permit, and its interests require that it should be done?

A correct mind will discern at once, that it can belong neither to the legislative nor judicial department, of course must belong to the executive.

The legislative department is not the *organ* of intercourse between the United States and foreign nations. It is charged neither with *making* nor *interpreting* treaties. It is therefore not naturally that member of the government, which is to pronounce the existing condition of the nation, with regard to foreign powers, or to admonish the citizens of their obligations and duties in consequence; still less is it charged with enforcing the observance of those obligations and duties.

It is equally obvious, that the act in question is foreign to the judiciary department. The province of that department is to decide litigations in particular cases. It is indeed charged with the interpretation of treaties, but it exercises this function only where contending parties bring before it a specific controversy. It has no concern with

* See Vatel, Book III, Chap. 7, Sec. 113.

pronouncing upon the external political relations of treaties between government and government. This position is too plain to need being insisted upon.

It must then of necessity belong to the executive department to exercise the function in question, when a proper case for it occurs.

It appears to be connected with that department in various capacities: As the *organ* of intercourse between the nation and foreign nations; as the *interpreter* of the national treaties, in those cases in which the judiciary is not competent, that is, between government and government; as the *power*, which is charged with the execution of the laws, of which treaties form a part; as that which is charged with the command and disposition of the public force.

This view of the subject is so natural and obvious, so analogous to general theory and practice, that no doubt can be entertained of its justness, unless to be deduced from particular provisions of the constitution of the United States.

Let us see, then, if cause for such doubt is to be found there.

The second article of the constitution of the United States, section first, establishes this general proposition, that "the EXECUTIVE POWER shall be vested in a president "of the United States of America."

The same article, in a succeeding section, proceeds to delineate partiular cases of executive power. It declares, among other things, that the president shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; that he shall have power, by and with the advice and consent of the senate, to make treaties; that it shall be his duty to receive ambas-

sadors and other public ministers, *and to take care that the laws be faithfully executed.*

It would not consist with the rules of sound construction, to consider this enumeration of particular authorities as derogating from the more comprehensive grant in the general clause, further than as it may be coupled with express restrictions or limitations; as in regard to the coop eration of the senate in the appointment of officers, and the making of treaties; which are plainly qualifications of the general executive powers of appointing officers and making treaties. The difficulty of a complete enumeration of all the cases of executive authority, would naturally dictate the use of general terms, and would render it improbable, that a specification of certain particulars was designed as a substitute for those terms, when antecedently used. The different mode of expression employed in the constitution, in regard to the two powers, the legislative and the executive, serves to confirm this inference. In the article which gives the legislative powers of the government, the expressions are, "All legislative powers herein "granted shall be vested in a congress of the United "States." In that which grants the executive power, the expressions are, "*The executive power* shall be vested in "a president of the United States."

The enumeration ought therefore to be considered, as intended merely to specify the principal articles implied in the definition of executive power; leaving the rest to flow from the general grant of that power, interpreted in conformity with other parts of the constitution, and with the principles of free government.

The general doctrine of our constitution then is, that the *executive power* of the nation is vested in the president; subject only to the *exceptions* and *qualifications*, which are expressed in the instrument.

Two of these have been already noticed; the participation of the senate in the appointment of officers, and in the making of treaties. A third remains to be mentioned; the right of the legislature "to declare war, and grant letters "of marque and reprisal."

With these exceptions, the *executive power* of the United States is completely lodged in the president. This mode of construing the constitution has indeed been recognised by congress in formal acts, upon full consideration and debate; of which the power of removal from office is an important instance. It will follow, that if a proclamation of neutrality is merely an executive act, as, it is believed, has been shown, the step which has been taken by the president is liable to no just exception on the score of authority.

It may be said, that this inference would be just, if the power of declaring war had not been vested in the legislature; but that this power naturally includes the right of judging, whether the nation is or is not under obligations to make war.

The answer is, that however true this position may be, it will not follow, that the executive is in any case excluded from a similar right of judgment, in the execution of its own functions.

If on the one hand, the legislature have a right to declare war, it is, on the other, the duty of the executive to preserve peace, till the declaration is made; and in fulfilling this duty, it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the country impose on the government: and when it has concluded that there is nothing in them inconsistent with neutrality, it becomes both its province and its duty to enforce the laws incident to that state of the nation. The executive is charged with the execution of all laws, the

law of nations, as well as the municipal law, by which the former are recognised and adopted. It is consequently bound, by executing faithfully the laws of neutrality, when the country is in a neutral position, to avoid giving cause of war to foreign powers.

This is the direct end of the proclamation of neutrality. It declares to the United States their situation with regard to the contending parties, and makes known to the community, that the laws incident to that state will be enforced. In doing this, it conforms to an established usage of nations, the operation of which, as before remarked, is to obviate a responsibility on the part of the whole society, for secret and unknown violations of the rights of any of the warring powers by its citizens.

Those who object to the proclamation will readily admit, that it is the right and duty of the executive to interpret those articles of our treaties which give to France particular privileges, in order to the enforcement of them: but the necessary consequence of this is, that the executive must judge what are their proper limits; what rights are given to other nations, by our contracts with them; what rights the law of nature and nations gives, and our treaties permit, in respect to those countries with which we have none; in fine, what are the reciprocal rights and obligations of the United States, and of all and each of the powers at war.

The right of the executive to receive ambassadors and other public ministers, may serve to illustrate the relative duties of the executive and legislative departments. This right includes that of judging, in the case of a revolution of government in a foreign country, whether the new rulers are competent organs of the national will, and ought to be recognised, or not; which, where a treaty antecedently exists between the United States and such nation,

involves the power of continuing or suspending its operation. For until the new government is *acknowledged*, the treaties between the nations, so far at least as regards *public* rights, are of course suspended.

This power of determining virtually upon the operation of national treaties, as a consequence of the power to receive public ministers, is an important instance of the right of the executive, to decide upon the obligations of the country with regard to foreign nations. To apply it to the case of France, if there had been a treaty of alliance, *offensive* and defensive, between the United States and that country, the unqualified acknowledgment of the new government would have put the United States in a condition to become an associate in the war with France, and would have laid the legislature under an obligation, if required, and there was otherwise no valid excuse, of exercising its power of declaring war.

This serves as an example of the right of the executive, in certain cases, to determine the condition of the nation, though it may, in its consequences, affect the exercise of the power of the legislature to declare war. Nevertheless, the executive cannot thereby control the exercise of that power. The legislature is still free to perform its duties, according to its own sense of them; though the executive, in the exercise of its constitutional powers, may establish an antecedent state of things, which ought to weigh in the legislative decisions.

The division of the executive power in the constitution, creates a *concurrent* authority in the cases to which it relates.

Hence, in the instance stated, treaties can only be made by the president and senate jointly; but their activity may be continued or suspended by the president alone.

No objection has been made to the president's having

acknowledged the republic of France, by the reception of its minister, without having consulted the senate; though that body is connected with him in the making of treaties, and though the consequence of his act of reception is, to give operation to those heretofore made with that country. But he is censured for having declared the United States to be in a state of peace and neutrality, with regard to the powers at war; because the right of *changing* that state and *declaring war*, belongs to the legislature.

It deserves to be remarked, that as the participation of the senate in the making of treaties, and the power of the legislature to declare war, are exceptions out of the general "executive power" vested in the president; they are to be construed strictly, and ought to be extended no further than is essential to their execution.

While, therefore, the legislature can alone declare war, can alone actually transfer the nation from a state of peace to a state of hostility, it belongs to the "executive power" to do whatever else the law of nations, cooperating with the treaties of the country, enjoin in the intercourse of the United States with foreign powers.

In this distribution of authority, the wisdom of our constitution is manifested. It is the province and duty of the executive to preserve to the nation the blessings of peace. The legislature alone can interrupt them by placing the nation in a state of war.

But though it has been thought advisable to vindicate the authority of the executive on this broad and comprehensive ground, it was not absolutely necessary to do so. That clause of the constitution which makes it his duty to "take care that the laws be faithfully executed," might alone have been relied upon, and this simple process of argument pursued.

The president is the constitutional EXECUTOR of the laws.

Our treaties, and the laws of nations, form a part of the law of the land. He, who is to execute the laws, must first judge for himself of their meaning. In order to the observance of that conduct which the laws of nations, combined with our treaties, prescribed to this country, in reference to the present war in Europe, it was necessary for the president to judge for himself, whether there was any thing in our treaties, incompatible with an adherence to neutrality. Having decided that there was not, he had a right, and if in his opinion the interest of the nation required it, it was his duty as executor of the laws, to proclaim the neutrality of the nation, to exhort all persons to observe it, and to warn them of the penalties which would attend its non-observance.

The proclamation has been represented as enacting some new law. This is a view of it entirely erroneous. It only proclaims a *fact*, with regard to the *existing state* of the nation; informs the citizens of what the laws previously established require of them in that state, and notifies them that these laws will be put in execution against the infractors of them.

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## No. II.

THE second and principal objection to the proclamation, namely, that it is inconsistent with the treaties between the United States and France, will now be examined.

It has been already shown, that it does not militate against the performance of any of the stipulations in those treaties, which would not make us an associate or party in the war, and especially that it does not interfere with the privileges secured to France by the seventeenth and twenty-second articles of the treaty of commerce; which, except the clause of guaranty, constitute the most material discriminations to be found in our treaties in favour of that country.

Official documents have likewise appeared in the public papers, which serve as a comment upon the sense of the proclamation in this particular, proving that it was not deemed by the executive incompatible with the performance of the stipulations in those articles, and that in practice they are intended to be observed.

It has, however, been admitted, that the declaration of neutrality excludes the idea of an execution of the clause of guaranty.

It becomes necessary therefore to examine, whether the United States would have a valid justification for not complying with it, in case of their being called upon for that purpose by France.

Without knowing how far the reasons which have occurred to me may have influenced the president, there appear to me to exist very good and substantial grounds for a refusal.

The alliance between the United States and France, is of the defensive kind. In the caption, it is denominated a "treaty of alliance eventual and defensive." In the body (article the second) it is called a defensive alliance. The words of that article are as follows: "The essential and "direct end of the present defensive alliance is to maintain "effectually the liberty, sovereignty, and independence, "absolute and unlimited, of the United States, as well in "matters of government, as of commerce."

The leading character then of our alliance with France being defensive, it will follow that the meaning, obligation, and force of every stipulation in the treaty, must be tested by the principles of such an alliance; unless in any instance terms have been used which clearly and unequivocally denoted a different intent.

The principal question consequently is: what is the nature and effect of a defensive alliance? When does the *casus fœderis* take place, in relation to it?

Reason, the concurring opinions of writers, and the practice of nations, will all answer: "When either of the allies "is *attacked*, when war is *made upon him*, not when he "*makes war upon another*:" in other words, the stipulated assistance is to be given "when our ally is engaged in a "defensive, not when he is engaged in an offensive war." This obligation to assist only in a defensive war, constitutes the essential difference between an alliance which is merely defensive, and one which is both offensive and defensive. In the latter case, there is an obligation to cooperate as well when the war, on the part of our ally, is of the latter, as when it is of the former description. To affirm, therefore, that the United States are bound to assist France in the war in which she is at present engaged, will be to convert our treaty with her into an alliance offensive and defensive, contrary to the express and reiterated declarations of the instrument itself.

This assertion implies, that the war in question is an offensive war on the part of France.

And so it undoubtedly is, with regard to all the powers with whom she was at war, at the time of issuing the proclamation.

No position is better established, than that the nation which first declares, or actually begins a war, whatever may have been the causes leading to it, is that which makes an offensive war. Nor is there any doubt, that France first declared and began the war, against Austria, Prussia, Savoy, Holland, England, and Spain.

Upon this point, there is apt to be some incorrectness of ideas. Those who have not examined subjects of such a nature, are led to imagine that the party which commits the first injury, or gives the first provocation, is on the offensive side, though hostilities are actually begun by the other party.

But the cause or the occasion of the war, and the war itself, are things entirely distinct. It is the commencement of the war itself which decides the question, whether it be offensive or defensive. All writers on the laws of nations agree in this doctrine; but it is most accurately laid down in the following extracts from Burlemaqui.*

"Neither are we to believe (says he) that he who first "injures another, begins by that an offensive war, and that "the other who demands the satisfaction for the injury re- "ceived, is always on the defensive. There are a great "many unjust acts, which may kindle a war, and which, "however, are not the war itself; as the ill treatment of a "prince's ambassadors, the plundering of his subjects, "&c."

If, therefore, we take up arms to revenge such an unjust act, we commence an offensive, but a just war; and the prince who has done the injury, and will not give satisfaction, makes a defensive, but an unjust war.

We must therefore affirm, in general, that the first who takes up arms, whether justly or unjustly, commences an offensive war; and he who opposes him, whether with or without reason, begins a defensive war.

France then being on the offensive in the present war, and our alliance with her being defensive only, it follows, that the *casus fœderis*, or condition of our guaranty, cannot take place; and that the United States are free to refuse a performance of that guaranty, if demanded.

Those who are disposed to justify indiscriminately every thing in the conduct of France, may reply that though the war, in point of form, may be offensive on her part, yet in point of principle, it is defensive; was in each instance a mere anticipation of attacks meditated against her, and was justified by previous aggressions of the opposite parties.

* Vol. II, Book IV, Chap. III, Sec. 4, 5.

It is believed that it would be a sufficient answer to this observation to say, that in determining the legal and positive obligations of the United States, the only point of inquiry is, whether the war was in fact begun by France, or by her enemies; that all beyond this is too vague, too liable to dispute, too much matter of opinion to be a proper criterion of national conduct; that when a war breaks out between two nations, all others, in regard to the positive rights of the parties, and their positive duties towards them, are bound to consider it as equally just on both sides; that consequently in a defensive alliance, when war is made upon one of the allies, it is the duty of the other to fulfil the conditions stipulated on its part, without inquiry, whether the war is rightfully begun or not; as on the other hand, when war is commenced by one of the allies, the other is exempted from the obligation to assist, however just the commencement of it may have been.

This doctrine is founded upon the utility of clear and certain rules for determining the reciprocal duties of nations, in order that as little as possible may be left to opinion, and to the subterfuges of an over-refining or unfaithful casuistry.

Some writers indeed of high authority affirm, that it is a tacit condition of every alliance, that one ally is not bound to assist the other in a war manifestly unjust. But this is questioned by other respectable authorities on the ground which has been stated. And though the manifest injustice of the war has been affirmed by some, to be a good cause for not executing the formal obligations of a treaty, I have nowhere seen it maintained, that the abstract justice of a war will of itself oblige a nation to do what its formal obligations do not enjoin: if this however were not the true doctrine, an impartial examination would prove, that with respect to some of the powers, France is not blameless in

the circumstances which preceded and led to the war; that if she received, she also gave causes of offence, and that the justice of the war, on her side, is in those cases not a little problematical.

There are prudential reasons, which dissuade from going largely into this examination, unless it shall be rendered necessary by the future turn of the discussion.

It will be sufficient here to notice cursorily the following facts:

France committed an aggression upon Holland, in declaring the navigation of the Scheldt free, and acting upon that declaration; contrary to treaties in which she had explicitly acknowledged, and even guarantied, the exclusive right of Holland to the use of that river; and contrary also to the doctrines of the best writers, and the established usages of nations in such cases.

She gave a general and very serious cause of alarm and umbrage by the decree of the 19th of November, 1792, whereby the convention, in the name of the French nation, declare, that they will grant fraternity and assistance to *every people* who wish to recover their liberty; and charge the executive power to send the necessary orders to the generals to give assistance to such people, and to defend those citizens who have been, or who may be vexed for the cause of liberty; which decree was ordered to be printed in all languages.

This very extraordinary decree amounted exactly to what France herself had most complained of; an interference by one nation in the internal government of another.

When a nation has actually come to a resolution to throw off a yoke, under which it may have groaned, and to assert its liberties, it is justifiable and meritorious in another, to afford assistance to the one which has been op-

pressed, and is in the act of liberating itself; but it is not warrantable for any nation beforehand, to hold out a general invitation to insurrection and revolution, by promising to assist every people who may wish to recover their liberty, and to defend those citizens of every country, who have been, or who may be vexed for the cause of liberty; still less to commit to the generals of its armies the discretionary power of judging, when the citizens of a foreign country have been vexed for the cause of liberty by their own government.

For Vatel justly observes, as a consequence of the liberty and independence of nations, "that it does not belong "to any foreign power, to take cognizance of the adminis- "tration of a sovereign of another country, to set himself "up as a judge of his conduct, or to oblige him to alter "it."

It had a natural tendency to disturb the tranquillity of nations, and to excite everywhere fermentation and revolt: it therefore justified neutral powers, who were in a situation to be affected by it, in taking measures to repress the spirit by which it had been dictated.

But the principle of that decree received a more particular application to Great Britain, by some subsequent circumstances.

Among the proofs of this are two answers, which were given by the president of the national convention, at a public sitting on the 28th of November, to two different addresses; one presented by a deputation from "the society "for constitutional information in London," the other by a deputation of English and Irish citizens at Paris.

The following are extracts from these answers:

"The shades of Penn, of Hambden, and of Sidney, "hover over your heads; and the moment, without doubt, "approaches, in which the French will bring congratula- "tions to the national convention of Great Britain."

"Nature and principles draw towards us England, Scot-
"land, and Ireland. Let the cries of friendship resound
"through the two REPUBLICS"—"Principles are waging
"war against tyranny, which will fall under the blows of
"philosophy. ROYALTY in Europe is either destroyed or
"on the point of perishing, on the ruins of feudality: and
"the declaration of rights placed by the side of thrones, is
"a devouring fire which will consume them—Worthy RE-
"PUBLICANS," &c.

Declarations of this sort, cannot but be viewed as a direct application of the principle of the decree to Great Britain; and as an open patronage of a revolution in that country; a conduct which, proceeding from the head of the body that governed France, in the presence and on behalf of that body, was unquestionably an offence and injury to the nation to which it is related.

The decree of the 15th of November, is a further cause of offence to all the governments of Europe. By that decree, "the French nation declares, that it will treat as enemies the "people, who, refusing or renouncing liberty and equality, "are desirous of preserving their prince and privileged "casts, or of entering into an accommodation with them," &c. This decree was little short of a declaration of war against all nations having princes and privileged classes.

The formal and definitive annexation to France of the territories over which her arms had temporarily prevailed, is another violation of just and moderate principles, into which the convention was betrayed by an intemperate zeal, if not by a culpable ambition; and of a nature to justify the jealousy and ill will of every neighboring state.

The laws of nations give to a power at war nothing more than a usufructuary or possessory right to the territories which it acquires; suspending the absolute property and dominion, till a treaty of peace, or something equivalent, shall have ceded or relinquished the conquered territory

to the conqueror. This rule is one of primary importance to the tranquillity and security of nations—facilitating an adjustment of their quarrels, and the preservation of ancient limits.

But France, by incorporating with herself in several instances the territories she had acquired, violated that rule, and multiplied infinitely the obstacles to peace and accommodation. The doctrine that a nation cannot consent to its own dismemberment, but in a case of extreme necessity, immediately attached itself to all the conquered territories; while the progressive augmentation of the dominions of the most powerful empire in Europe, on a principle not of temporary possession, but of permanent acquisition, threatened the independence of all other countries, and gave to neighbouring neutral powers the justest cause of discontent and apprehension. It is a principle well agreed, and founded on substantial reasons, that whenever a particular state adopts maxims of conduct contrary to those generally established among nations, calculated to interrupt their tranquillity and to expose their safety, they may justifiably make common cause to resist and control the state which manifests a disposition so suspicious and exceptionable.

Whatever partiality may be entertained for the general object of the French revolution, it is impossible for any well-informed or sober-minded man, not to condemn the proceedings which have been stated, as repugnant to the rights of nations, to the true principles of liberty, to the freedom of opinion of mankind; or not to acknowledge as a consequence of this, that the justice of the war on the part of France, with regard to some of the powers with which she is engaged, is from those causes questionable enough to free the United States from all embarrassment on that score, if indeed it be at all incumbent upon them to go into the inquiry.

The policy of a defensive alliance is so essentially distinct from that of an offensive one, that it is every way important not to confound their effects. The first kind has in view the prudent object of mutual defence, when either of the allies is involuntarily forced into a war by the attack of some third power. The latter subjects the peace of each ally to the will of the other, and obliges each to partake in the other's wars of policy and interest, as well as in those of safety and defence. To preserve their boundaries distinct, it is necessary that each kind should be governed by plain and obvious rules.

This would not be the case, if instead of taking as a guide the simple fact of who began the war, it was necessary to travel into metaphysical niceties about the justice or injustice of the causes which led to it:

Inasmuch also as the not furnishing a stipulated succour, when it is due, is itself a cause of war, it is very requisite that there should be some palpable criterion for ascertaining, when it is due. This criterion, as before observed, in a defensive alliance, is the commencement or not, of the war by our ally, as a mere matter of fact.

Other topics, serving to illustrate the position that the United States are not bound to execute the clause of guaranty, are reserved for another paper.

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## No. III.

France, at the time of issuing the proclamation, was engaged in war with a considerable part of Europe, and likely to be embroiled with almost all the rest, without a single ally in that quarter of the globe.

In such a situation, it is evident, that however she may be able to defend herself at home, of which her factions and internal agitations furnish the only serious doubt, she cannot make external efforts in any degree proportioned to those which can be made against her.

This state of things alone discharges the United States from an obligation to embark in her quarrel.

It is known, that we are wholly destitute of naval force. France, with all the great maritime powers united against her, is unable to supply this deficiency. She cannot afford us that species of cooperation which is necessary to render our efforts useful to her, and to prevent our experiencing the destruction of our trade, and the most calamitous inconveniences in other respects.

Our guaranty does not look to France herself. It does not relate to her immediate defence, but to the defence and preservation of her American colonies; objects of which she might be deprived, and yet remain a great, a powerful, and a happy nation.

In the actual situation of this country, and in relation to a matter of only secondary importance to France, it may fairly be maintained, that an ability in her to supply, in a competent degree, our deficiency of naval force, is a condition of our obligation to perform the guaranty on our part.

Had the United States a powerful marine, or could they command one in time, this reasoning would not be solid; but circumstanced as they are, it is presumed to be well founded.

There would be no proportion between the mischiefs and perils to which the United States would expose themselves, by embarking in the war, and the benefit which the nature of their stipulation aims at securing to France, or that which it would be in their power actually to render her by becoming a party.

This disproportion would be a valid reason for not executing the guaranty. All contracts are to receive a reasonable construction. Self-preservation is the first duty of a nation; and though in the performance of stipulations

relating to war, good faith requires that its ordinary hazards should be fairly met, because they are directly contemplated by such stipulations, yet it does not require that extraordinary and extreme hazards should be run; especially where the object to be gained or secured is only a partial or particular interest of the ally, for whom they are to be encountered.

As in the present instance, good faith does not require that the United States should put in jeopardy their essential interests, perhaps their very existence, in one of the most unequal contests in which a nation could be engaged, to secure to France—what? Her West India islands and other less important possessions in America. For it is always to be remembered, that the stipulations of the United States do, in no event, reach beyond this point. If they were, upon the strength of their guaranty, to engage in the war, and could make any arrangement with the belligerant powers, for securing to France those islands and those possessions, they would be at perfect liberty instantly to withdraw. They would not be bound to prosecute the war one moment longer.

They are under no obligation in any event, as far as the faith of treaties is concerned, to assist France in defence of her liberty; a topic on which so much has been said, so very little to the purpose, as it regards the present question.

The contest in which the United States would plunge themselves, were they to take part with France, would possibly be still more unequal than that in which France herself is engaged. With the possessions of Great Britain and Spain on both flanks, the numerous Indian tribes under the influence and direction of those powers, along our whole interior frontier, with a long extended seacoast, with no maritime force of our own, and with the maritime force of all Europe against us, with no fortifications whatever,

and with a population not exceeding four millions: it is impossible to imagine a more unequal contest, than that in which we should be involved in the case supposed. From such a contest we are dissuaded by the most cogent motives of self-preservation, no less than of interest.

We may learn from Vatel, one of the best writers on the laws of nations, "that if a state which has promised succours, finds itself unable to furnish them, its very inability "is its exemption; and if the furnishing the succours would "expose it to an evident danger, this also is a lawful dispensation. The case would render the treaty pernicious "to the state, and therefore not obligatory. But this applies to an imminent danger threatening the safety of the "state: the case of such a danger is tacitly and necessarily reserved in every treaty."*

If too, as no sensible and candid man will deny, the extent of the present combination against France, is in a degree to be ascribed to imprudences on her part; the exemption to the United States is still more manifest and complete. No country is bound to partake in hazards of the most critical kind, which may have been produced or promoted by the indiscretion and intemperance of another. This is an obvious dictate of reason, with which the common sense and common practice of mankind coincide.

To the foregoing considerations, it may perhaps be added with no small degree of force, that military stipulations in national treaties, contemplate only the ordinary case of foreign war, and are irrelative to the contests which grow out of revolutions of government; unless where they have express reference to a revolution begun, or where there is a guaranty of the existing constitution of a nation, or where there is a personal alliance for the defence of a prince and his family.†

* See Book III, Chap. VI, Sec. 92. † Puffendorff, Book VIII, Chap. IX. Section 9.

The revolution in France is the primitive source of the war in which she is engaged. The restoration of the monarchy is the avowed object of some of her enemies, and the implied one of all. That question then is essentially involved in the principle of the war; a question certainly never in the contemplation of the government with which our treaty was made, and it may thence be fairly inferred, never intended to be embraced by it.

The inference is, that the United States fulfilled the utmost that could be claimed by the nation of France, when they so far respected its decision as to recognise the newly constituted authorities; giving operation to the treaty of alliance for future occasions, but considering the present war as a tacit exception. Perhaps too, this exception is, in other respects, due to the circumstances under which the engagements between the two countries were contracted. It is impossible, prejudice apart, not to perceive a delicate embarrassment between the theory and fact of our political relations to France.

On these grounds, also, as well as that of the present war being offensive on the side of France, the United States have valid and honourable pleas to offer against the execution of the guaranty, if it should be claimed by France. And the president was in every view fully justified in pronouncing, that the duty and interest of the United States dictated a neutrality in the war.

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## No. IV.

A THIRD objection to the proclamation is, that it is inconsistent with the gratitude due to France, for the services rendered to us in our revolution.

Those who make this objection disavow, at the same time, all intention to maintain the position, that the United

States ought to take part in the war. They profess to be friends to our remaining at peace. What then do they mean by the objection?

If it be no breach of gratitude to refrain from joining France in the war, how can it be a breach of gratitude to declare, that such is our disposition and intention?

The two positions are at variance with each other; and the true inference is, either that those who make the objection really wish to engage this country in the war, or that they seek a pretext for censuring the conduct of the chief magistrate, for some purpose very different from the public good.

They endeavour in vain to elude this inference by saying, that the proclamation places France upon an equal footing with her enemies; while our treaties require distinctions in her favour, and our relative situation would dictate kind offices to her, which ought not to be granted to her adversaries.

They are not ignorant, that the proclamation is reconcileable with both those objects, as far as they have any foundation in truth or propriety.

It has been shown, that the promise of "a friendly and impartial conduct" towards all the belligerant powers, is not incompatible with the performance of any stipulations in our treaties, which would not include our becoming an associate in the war; and it has been observed, that the conduct of the executive, in regard to the seventeenth and twenty-second articles of the treaty of commerce, is an unequivocal comment upon the terms. They were, indeed, naturally to be understood, with the exception of those matters of positive compact, which would not amount to taking part in the war; for a nation then observes a friendly and impartial conduct towards two contending powers, when it only performs to one of them what it is obliged to

do by stipulations in antecedent treaties, which do not constitute a participation in the war.

Neither do those expressions imply, that the United States will not exercise their discretion in doing kind offices to some of the parties, without extending them to the others, so long as they have no relation to war: for kind offices of that description may, consistently with neutrality, be shown to one party and refused to another.

If the objectors mean, that the United States ought to favour France, in things relating to war, and where they are not bound to do it by treaty; they must in this case also abandon their pretension of being friends to peace. For such a conduct would be a violation of neutrality, which could not fail to produce war.

It follows then, that the proclamation is reconcileable with all that those who censure it contend for; taking them upon their own ground, that nothing is to be done incompatible with the preservation of peace.

But though this would be a sufficient answer to the objection under consideration; yet it may not be without use, to indulge some reflections on this very favourite topic of gratitude to France; since it is at this shrine that we are continually invited to sacrifice the true interests of the country; as if "all for love, and the world well lost," were a fundamental maxim in politics.

Faith and justice, between nations, are virtues of a nature the most necessary and sacred. They cannot be too strongly inculcated, nor too highly respected. Their obligations are absolute, their utility unquestionable; they relate to objects which, with probity and sincerity, generally admit of being brought within clear and intelligible rules.

But the same cannot be said of gratitude. It is not very often that between nations, it can be pronounced with certainty, that there exists a solid foundation for the senti-

ment; and how far it can justifiably be permitted to operate, is always a question of still greater difficulty.

The basis of gratitude is a benefit received or intended, which there was no right to claim, originating in a regard to the interest or advantage of the party on whom the benefit is, or is meant to be, conferred. If a service is rendered from views relative to the immediate interest of the party who performs it, and is productive of reciprocal advantages, there seems scarcely in such a case, to be an adequate basis for a sentiment like that of gratitude. The effect at least would be wholly disproportioned to the cause, if such a service ought to beget more than a disposition to render in turn a correspondent good office, founded on mutual interest and reciprocal advantage. But gratitude would require much more than this; it would exact to a certain extent, even a sacrifice of the interest of the party obliged to the service or benefit of the one by whom the obligation had been conferred.

Between individuals, occasion is not unfrequently given for the exercise of gratitude. Instances of conferring benefits from kind and benevolent dispositions or feelings towards the person benefited, without any other interest on the part of the person who renders the service, than the pleasure of doing a good action, occur every day among individuals. But among nations they perhaps never occur. It may be affirmed as a general principle, that the predominant motive of good offices from one nation to another, is the interest or advantage of the nation which performs them.

Indeed, the rule of morality in this respect is not precisely the same between nations, as between individuals. The duty of making its own welfare the guide of its actions, is much stronger upon the former, than upon the latter; in proportion to the greater magnitude and impor-

tance of national, compared with individual happiness, and to the greater permanency of the effects of national, than of individual conduct. Existing millions, and for the most part future generations, are concerned in the present measures of a government; while the consequences of the private actions of an individual ordinarily terminate with himself, or are circumscribed within a narrow compass:

Whence it follows, that an individual may, on numerous occasions, meritoriously indulge the emotions of generosity and benevolence, not only without an eye to, but even at the expense of, his own interest. But a government can rarely, if at all, be justifiable in pursuing a similar course; and, if it does so, ought to confine itself within much stricter bounds.* Good offices which are indifferent to the interest of a nation performing them, or which are compensated by the existence or expectation of some reasonable equivalent, or which produce an essential good to the nation to which they are rendered, without real detriment to the affairs of the benefactors, prescribe perhaps the limits of national generosity or benevolence.

It is not here meant to recommend a policy absolutely selfish or interested in nations; but to show, that a policy regulated by their own interest, as far as justice and good faith permit, is, and ought to be, their prevailing one; and that either to ascribe to them a different principle of action, or to deduce, from the supposition of it, arguments for a self-denying and self-sacrificing gratitude on the part of a nation, which may have received from another good offices, is to misrepresent or misconceive what usually are, and ought to be, the springs of national conduct.

These general reflections will be auxiliary to a just esti-

*This conclusion derives confirmation from the reflection, that under every form of government, rulers are only trustees for the happiness and interest of their nation, and cannot, consistently with their trust, follow the suggestions of kindness or humanity towards others, to the prejudice of their constituents.

mate of our real situation with regard to France; of which a closer view will be taken in a succeeding paper.

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## No. V.

France, the rival, time immemorial, of Great Britain, had, in the course of the war which ended in 1763, suffered from the successful arms of the latter the severest losses and the most mortifying defeats. Britain from that moment had acquired an ascendant in the affairs of Europe, and in the commerce of the world, too decided and too humiliating to be endured without extreme impatience, and an eager desire of finding a favourable opportunity to destroy it, and to repair the breach which had been made in the national glory. The animosity of wounded pride conspired with calculations of interest, to give a keen edge to that impatience, and to that desire.

The American revolution offered the occasion. It early attracted the notice of France, though with extreme circumspection. As far as countenance and aid may be presumed to have been given prior to the epoch of the acknowledgment of our independence, it will be no unkind derogation to assert, that they were marked neither with liberality, nor with vigour; that they wore the appearance rather of a desire to keep alive disturbances which might embarrass a rival, than of a serious design to assist a revolution, or a serious expectation that it could be effected.

The victories of Saratoga, the capture of an army, which went a great way towards deciding the issue of the contest, decided also the hesitations of France. They established, in the government of that country, a confidence of our ability to accomplish our purpose, and, as a consequence of it, produced the treaties of alliance and commerce.

It is impossible to see in all this any thing more, than

the conduct of a jealous competitor, embracing a most promising opportunity to repress the pride, and diminish the power of a dangerous rival, by seconding a successful resistance to its authority, with the object of lopping off a valuable portion of its dominions. The dismemberment of this country from Great Britain was an obvious, and a very important interest of France. It cannot be doubted, that it was both the determining motive and an adequate compensation, for the assistance afforded to us.

Men of sense in this country, derived encouragement to the part which their zeal for liberty prompted them to take in our revolution, from the probability of the cooperation of France and Spain. It will be remembered, that this argument was used in the publications of the day; but upon what was it bottomed? Upon the known competition between those nations and Great Britain, upon their evident interest to reduce her power and circumscribe her empire; not certainly upon motives of regard to our interest, or of attachment to our cause. Whoever should have alleged the latter, as the grounds of the expectation held out, would have been then justly considered as a visionary or a deceiver. And whoever shall now ascribe to such motives the aid which we did receive, would not deserve to be viewed in a better light.

The inference from these facts is not obscure. Aid and cooperation, founded upon a great interest, pursued and obtained by a party rendering them, is not a proper stock upon which to engraft that enthusiastic gratitude, which is claimed from us by those who love France more than the United States.

This view of the subject, extorted by the extravagancy of such a claim, is not meant to disparage the just pretensions of France to our good will. Though neither in the motives to the succours which she furnished, nor in their

extent, (considering how powerfully the point of honour, in such war, reinforced the considerations of interest when she was once engaged,) can be found a sufficient basis for that gratitude which is the theme of so much declamation; yet we shall find, in the manner of affording them, just cause for our esteem and friendship.

France did not attempt, in the first instance, to take advantage of our situation to extort from us any humiliating or injurious concessions, as the price of her assistance; nor afterwards in the progress of the war, to impose hard terms as the condition of particular aids.

Though this course was certainly dictated by policy; yet it was a magnanimous policy, such as always constitutes a title to the approbation and esteem of mankind; and a claim to the friendship and acknowledgment of the party in whose favour it is practised.

But these sentiments are satisfied on the part of a nation, when they produce sincere wishes for the happiness of the party from whom it has experienced such conduct, and a cordial disposition to render all good and friendly offices, which can be rendered without prejudice to its own solid and permanent interests.

To ask of a nation so situated, to make a sacrifice of substantial interest; to expose itself to the jealousy, ill will, or resentment of the rest of the world; to hazard, in an eminent degree, its own safety, for the benefit of the party who may have observed towards it the conduct which has been described; would be to ask more than the nature of the case demands, more than the fundamental maxims of society authorize, more than the dictates of sound reason justify.

A question has arisen, with regard to the proper object of that gratitude, which is so much insisted upon: whether it be the unfortunate prince by whom the assistance receiv-

ed was given; or the nation of whom he was the chief or the organ? It is extremely interesting to the national justice, to form right conceptions on this point.

The arguments which support the latter idea, are as follows:

"Louis the XVI, was but the constitutional agent of the "French people. He acted for and on behalf of the na- "tion; it was with their money and their blood he support- "ed our cause. It is to them, therefore, not to him, that "our obligations are due. Louis the XVI, in taking our "part, was no doubt actuated by state policy. An abso- "lute prince could not love liberty. But the people of "France patronized our cause with zeal, from sympathy in "its object. The people therefore, not its monarch, are en- "titled to our sympathy."

This reasoning may be ingenious; but it is not founded in nature or fact.

Louis the XVI, though no more than the constitutional agent of the nation, had at the time the sole power of managing its affairs, the legal right of directing its will and its force. It belonged to him to assist us, or not, without consulting the nation; and he did assist without such consultation. His will alone was active, that of the nation passive. If there was kindness in the decision, demanding a return of good will, it was the kindness of Louis XVI—his heart was the depository of the sentiment. Let the genuine voice of nature then, unperverted by political subtleties, pronounce whether the acknowledgment, which may be due for that kindness, can be equitably transferred from him to others, who had no share in the decision; whether the principle of gratitude ought to determine us to behold with indifference his misfortunes, and with satisfaction the triumphs of his foes.

The doctrine, that the prince is the organ of his nation,

is conclusive to enforce the obligations of good faith between two states; in other words, the observance of duties stipulated in treaties for national purposes; and it will even suffice to continue to a nation a claim to the friendship and good will of another, resulting from friendly offices done by its prince; but it would be to carry the principle much too far, and to render it infinitely too artificial to attribute to it the effect of transferring such a claim from the prince to the nation, by way of opposition and contrast. Friendship, good will, gratitude for favours received, have so inseparable a reference to the motives with which, and to the persons by whom they were rendered, as to be incapable of being transferred to another at his expense.

But Louis XVI, it is said, acted from reasons of state, without regard to our cause; while the people of France patronized it with zeal and attachment.

As far as the assertion with regard to the monarch may be well founded, and is an objection to our gratitude to him, it destroys the whole fabric of gratitude to France. For our gratitude is, and must be, relative to the services performed. The nation can only claim it on the score of their having been rendered by their agent with their means. If the views with which he performs them divested them of the merit which ought to inspire gratitude, none is due. The nation no more than their agent can claim it.

With regard to the individual good wishes of the citizens of France, as they did not produce the services rendered to us as a nation, they can be no foundation for national gratitude. They can only call for a reciprocation of individual good wishes. They cannot form the basis of public obligation.

But the assertion takes more for granted than there is reason to believe true.

Louis the XVI no doubt took part in our contest from

reasons of state; but Louis the XVI was a man, humane and kind-hearted. The acts of his early youth had entitled him to this character. It is natural for a man of this disposition to become interested in the cause of those whom he protects or aids; and if the concurrent testimony of the period may be credited, there was no man in France more personally friendly to the cause of this country than Louis the XVI. I am much misinformed, if repeated declarations of the venerable Franklin did not attest this fact.

It is a just tribute to the people of France to admit, that they manifested a lively interest in the cause of America; but while motives are scanned, who can say how much of it is to be ascribed to the antipathy which they bore to their rival neighbour; how much to their sympathy in the object of our pursuit? It is certain that the love of liberty was not a national sentiment in France, when a zeal for our cause first appeared among that people.

There is reason to believe too, that the attachment to our cause, which ultimately became very extensive, if not general, did not originate with the mass of the French people. It began with the circles more immediately connected with the court, and was thence diffused through the nation.

This observation, besides its tendency to rectify ideas, which are calculated to give a false current to the public feeling, may serve to check the spirit of illiberal invective, which has been wantonly indulged against those distinguished friends of America, who, though the authors of the French revolution, have fallen victims to it; because their principles would not permit them to go the whole length of an entire subversion of the monarchy.

The preachers of gratitude are not ashamed to brand Louis the XVI. as a tyrant, La Fayette as a traitor. But

how can we wonder at this, when they insinuate a distrust even of a——!!!

In urging the friendly disposition to our cause, manifested by the people of France, as a motive to our gratitude towards that people, it ought not to be forgotten, that those dispositions were not confined to the inhabitants of that country. They were eminently shared by the people of the United Provinces, produced to us valuable pecuniary aids from their citizens, and eventually involved them in the war on the same side with us. It may be added too, that here the patronage of our cause emphatically began with the mass of the community, not originating as in France with the government, but finally implicating the government in the consequences.

Our cause had also numerous friends in other countries; even in that with which we were at war. Conducted with prudence, moderation, justice, and humanity, it may be said to have been a popular cause among mankind, conciliating the countenance of princes, and the affection of nations.

The disposition of the individual citizens of France can therefore in no sense be urged, as constituting a peculiar claim to our gratitude. As far as there is foundation for it, it must be referred to the services rendered to us; and, in the first instance, to the unfortunate monarch that rendered them. This is the conclusion of nature and reason.

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## No. VI.

The very men who not long since, with a holy zeal, would have been glad to make an *auto de fe* of any one who should have presumed to assign bounds to our obligations to Louis the XVI, are now ready to consign to the flames those who venture even to think that he died a proper object of our sympathy or regret. The greatest

pains are taken to excite against him our detestation. His supposed perjuries and crimes are sounded in the public ear, with all the exaggerations of intemperate declaiming. All the unproved and contradicted allegations, which have been brought against him are taken for granted, as the oracles of truth, on no better grounds than the mere general presumptions, that he could not have been a friend to a revolution which stripped him of so much power; that it is not likely the convention would have pronounced him guilty, and consigned him to so ignominious a fate, if he had been really innocent.

It is possible that time may disclose facts and proofs, which will substantiate the guilt imputed to Louis: but these facts and proofs have not yet been authenticated to the world; and justice admonishes us to wait for their production and authentication.

Those who have most closely attended to the course of the transaction, find least cause to be convinced of the criminality of the deceased monarch. While his counsel, whose characters give weight to their assertions, with an air of conscious truth, boldly appeal to facts and proofs, in the knowledge and possession of the convention, for the refutation of the charges brought against him, the members of that body, in all the debates upon the subject which have reached this country, either directly from France, or circuitously through England, appear to have contented themselves with assuming the existence of the facts charged and inferring from them a criminality which, after the abolition of the royalty, they were interested to establish.

The presumption of guilt drawn from the suggestions which have been stated, is more than counterbalanced by an opposite one, which is too obvious not to have occurred to many, though I do not recollect yet to have met with it in print. It is this:

If the convention had possessed clear evidence of the guilt of Louis, they would have promulgated it to the world in an authentic and unquestionable shape. Respect for the opinion of mankind, regard for their own character, the interest of their cause, made this an indispensable duty; nor can the omission be satisfactorily ascribed to any other reason than the want of such evidence.

The inference is, that the melancholy catastrophe of Louis XVI was the result of a supposed political expediency, rather than of real criminality.

In a case so circumstanced, does it, can it consist with our justice or our humanity, to partake in the angry and vindictive passions which it is endeavored to excite against the unfortunate monarch? Was it a crime in him to have been born a prince? Could this circumstance forfeit his title to the commiseration due to his misfortunes as a man?

Would gratitude dictate to a people, situated as are the people of this country, to lend their aid to extend to the son the misfortunes of the father? Should we not be more certain of violating no obligation of that kind, and of not implicating the delicacy of our national character, by taking no part in the contest, than by throwing our weight into either scale?

Would not a just estimate of the origin and progress of our relations to France, viewed with reference to the mere question of gratitude, lead us to this result—that we ought not to take part against the son and successor of a father, on whose sole will depended the assistance which we received; that we ought not to take part with him against the nation, whose blood and whose treasure had been in the hands of the father, the means of that assistance?

But we are sometimes told, by way of answer, that the cause of France is the cause of liberty; and that we are bound to assist the nation on the score of their being en-

gaged in the defence of that cause. How far this idea ought to carry us, will be the subject of future examination.

It is only necessary here to observe, that it presents a question essentially different from that which has been in discussion. If we are bound to assist the French nation, on the principle of their being embarked in the defence of liberty, this is a consideration altogether foreign to that of gratitude. Gratitude has reference only to kind offices received. The obligation to assist the cause of liberty, must be deduced from the merits of that cause, and from the interest we have in its support. It is possible that the benefactor may be on one side; the defenders and supporters of liberty on the other. Gratitude may point one way, the love of liberty another. It is therefore important to just conclusions, not to confound the two things.

A sentiment of justice, more than the importance of the question itself, has led to so particular a discussion respecting the proper object of whatever acknowledgment may be due from the United States, for the aid which they received from France during their own revolution.

The extent of the obligation which it may impose is by far the most interesting inquiry. And though it is presumed, that enough has been already said to evince, that it does in no degree require us to embark in the war; yet there is another, and a very simple view of the subject, which is too convincing to be omitted.

The assistance derived from France was afforded by a great and powerful nation, possessing numerous armies, a respectable fleet, and the means of rendering it a match for the force to be encountered. The position of Europe was favourable to the enterprise; a general disposition prevailing to see the power of Britain abridged. The cooperation of Spain was very much a matter of course, and the probability of other powers becoming engaged on the same

side not remote Great Britain was alone, and likely to continue so: France had a great and persuasive interest in the separation of this country from her. In this situation, with much to hope and little to fear, she took part in our quarrel.

France is at this time singly engaged with the greatest part of Europe, including all the first-rate powers except one; and in danger of being engaged with the rest. To use the emphatic language of a member of the national convention, she has but one enemy, and that is all Europe. Her internal affairs are, without doubt, in serious disorder; her navy comparatively inconsiderable. The United States are a young nation: their population, though rapidly increasing, still small; their resources, though growing, not great; without armies, without fleets; capable, from the nature of the country and the spirit of its inhabitants, of immense exertions for self-defence, but little capable of those external efforts which could materially serve the cause to France. So far from having any direct interest in going to war, they have the strongest motives of interest to avoid it. By embarking with France in the war, they would have incomparably more to apprehend than to hope.

This contrast of situations and inducements is alone a conclusive demonstration, that the United States are not under an obligation, from gratitude, to join France in the war. The utter disparity between the circumstances of the service to be rendered, and of the service received, proves that the one cannot be an adequate basis of obligation for the other. There would be a manifest want of equality, and consequently of reciprocity.

But complete justice would not be done to this question of gratitude, were no notice to be taken of the address which has appeared in the public papers, (the authenticity of which has not been impeached,) from the convention of

France to the United States, announcing the appointment of the present minister plenipotentiary. In that address the convention informs us, that "the support which the "ancient French court had afforded the United States to "recover their independence, was only the fruit of a base "speculation; and that their glory offended its ambitious "views, and the ambassadors of France bore the criminal "orders of stopping the career of their prosperity."

If this information is to be admitted in the full force of the terms, it is very fatal to the claim of gratitude towards France. An observation similar to one made in a former paper occurs here. If the organ of the nation, on whose will the aid which was given depended, acted not only from motives irrelative to our advantage, but from unworthy motives, or, as is alleged, from a base speculation; if afterwards he displayed a temper hostile to the confirmation of our security and prosperity, he acquired no title to our gratitude in the first instance, or he forfeited it in the second. And the people of France, who can only demand it in virtue of the conduct of their agent, must, together with him, renounce the pretension. It is an obvious principle, that if a nation can claim merit from the good deeds of its sovereign, it must answer for the demerit of his misdeeds.

But some deductions are to be made from the suggestions in the address of the convention, on account of the motives which evidently dictated the communication. Their zeal to alienate the good will of this country from the late monarch, and to increase the odium of the French nation against the monarchy, which was so ardent as to make them overlook the tendency of their communication to deprive their votaries among us of the plea of gratitude, may justly be suspected of exaggeration.

The truth probably is, that the base speculation charged, amounts to nothing more than that the government of

France, in affording us assistance, was actuated by the motives which have been attributed to it, namely, the desire of promoting the interest of France, by lessening the power of Great Britain, and opening a new channel of commerce to herself; that the orders said to have been given to the ambassadors of France, to stop the career of our prosperity, are resolvable into a speculative jealousy of the ministers of the day, lest the United States, by becoming as powerful and great as they are capable of being under an efficient government, might prove formidable to the European possessions in America. With these qualifications, the address offers no new discovery to the intelligent and unbiased friends of their country. They knew long ago, that the interest of France had been the governing motive of the aid afforded; and they saw clearly enough in the conversation and conduct of her agents, while the present constitution of the United States was under consideration, that the government, of which they were the instruments, would have preferred our remaining under the old form. They perceived also, that these views had their effect upon some of the devoted partisans of France among ourselves; as they now perceive, that the same characters are embodying, with all the aid they can obtain, under the same banner, to resist the operation of that government of which they withstood the establishment.

All this was, and is seen; and the body of the people of America are too discerning to be long in the dark about it: too wise to have been misled by foreign or domestic machinations, they adopted a constitution which was necessary to their safety and to their happiness: too wise still to be ensnared by the same machinations, they will support the government they have established, and will take care of their own peace, in spite of the insidious efforts which are employed to detach them from the one, and to disturb the other.

The information which the address of the convention contains, ought to serve as an instructive lesson to the people of this country. It ought to teach us not to overrate foreign friendships; and to be upon our guard against foreign attachments. The former will generally be found hollow and delusive; the latter will have a natural tendency to lead us aside from our own true interest, and to make us the dupes of foreign influence. Both serve to introduce a principle of action, which, in its effects, if the expression may be allowed, is anti-national. Foreign influence is truly the Grecian horse to a republic. We cannot be too careful to exclude its entrance. Nor ought we to imagine, that it can only make its approaches in the gross form of direct bribery. It is then most dangerous when it comes under the patronage of our passions, under the auspices of national prejudice and partiality.

I trust the morals of this country are yet too good to leave much to be apprehended on the score of bribery. Caresses, condescensions, flattery, in unison with our prepossessions, are infinitely more to be feared: and as far as there is opportunity for corruption, it is to be remembered, that one foreign power can employ this resource as well as another; and that the effect must be much greater, when it is combined with other means of influence, than where it stands alone.

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## No. VIII.

The remaining objection to the proclamation of neutrality, still to be discussed, is, that it was out of time and unnecessary.

To give colour to this objection it is asked, why did not the proclamation appear, when the war commenced with Austria and Prussia? Why was it forborne, till Great Britain, Holland, and Spain, became engaged? Why did not the Government wait, till the arrival at Philadelphia of

the minister of the French Republic? Why did it volunteer a declaration not required of it by any of the belligerant parties?

To most of these questions, solid answers have already appeared in the public prints. Little more can be done, than to repeat and enforce them.

Austria and Prussia are not maritime powers. Contraventions of neutrality as against them, were not likely to take place to any extent, or in a shape that would attract their notice. It would therefore have been useless, if not ridiculous, to have made a formal declaration on the subject, while they were the only parties opposed to France.

But the reverse of this is the case with regard to Spain, Holland and England. These are all commercial and maritime nations. It was to be expected, that their attention would be immediately drawn towards the United States with sensibility, and even with jealousy. It was to be feared, that some of our citizens might be tempted by the prospect of gain to go into measures which would injure them, and hazard the peace of the country. Attacks by some of these powers upon the possessions of France in America, were to be looked for as a matter of course. While the views of the United States, as to that particular, were problematical, they would naturally consider us as a power that might become their enemy. This they would have been the more apt to do, on account of those public demonstrations of attachment to the cause of France, of which there has been so prodigal a display. Jealousy, every body knows, especially if sharpened by resentment, is apt to lead to ill treatment; ill treatment to hostility.

In proportion to the probability of our being regarded with a suspicious, and consequently an unfriendly eye, by the powers at war with France; in proportion to the danger of imprudences being committed by any of our citizens,

which might occasion a rupture with them, the policy on the part of the government, of removing all doubt as to its own disposition, and of deciding the condition of the United States, in the view of the parties concerned, became obvious and urgent.

Were the United States, now, what, if we do not rashly throw away the advantages we possess, they may expect to be in fifteen or twenty years, there would have been more room for an insinuation which has been thrown out, namely, that they ought to have secured to themselves some advantage, as the consideration of their neutrality: an idea, however, the justice and magnanimity of which cannot be commended. But in their present situation, with their present strength and resources, an attempt of that kind could have only served to display pretensions at once excessive and unprincipled. The chance of obtaining any collateral advantage, if such a chance there was, by leaving doubt of their intentions, as to peace or war, could not wisely have been put, for a single instant, in competition with the tendency of a contrary conduct to secure our peace.

The conduciveness of the declaration of neutrality to that end, was not the only recommendation to the adoption of the measure. It was of great importance that our own citizens should understand, as soon as possible, the opinion which the government entertained of the nature of our relations to the warring parties, and of the propriety or expediency of our taking a side, or remaining neuter. The arrangements of our merchants could not but be very differently effected by the one hypothesis or the other; and it would necessarily have been very detrimental and perplexing to them to have been left in uncertainty. It is not requisite to say, how much our agriculture and other interests would have been likely to have suffered by embarrassments to our merchants.

The idea of its having been incumbent on the government to delay the measure for the arrival of the minister of the French republic, is as absurd as it is humiliating. Did the executive stand in need of the logic of a foreign agent to enlighten it as to the duties or interests of the nation? Or was it bound to ask his consent to a step which appeared to itself consistent with the former, and conducive to the latter?

The sense of our treaties was to be learnt from the instruments themselves. It was not difficult to pronounce beforehand, that we had a greater interest in the preservation of peace, than in any advantages with which France might tempt our participation in the war. Commercial privileges were all that she could offer of real value in our estimation, and a *carte blanche* on this head would have been an inadequate recompense for renouncing peace, and committing ourselves voluntarily to the chances of so precarious and perilous a war. Besides, if the privileges which might have been conceded were not founded in a real permanent mutual interest, of what value would be the treaty that should concede them? Ought not the calculation, in such case, to be upon a speedy resumption of them, with perhaps a quarrel as the pretext? On the other hand, may we not trust that commercial privileges, which are truly founded in mutual interest, will grow out of that interest; without the necessity of giving a premium for them at the expense of our peace?

To what purpose then was the executive to have waited for the arrival of the minister? Was it to give opportunity to contentious discussions; to intriguing machinations; to the clamours of a faction won to a foreign interest?

Whether the declaration of neutrality, issued upon or without the requisition of any of the belligerant powers, can only be known to their respective ministers, and to the pro-

per officers of our government. But if it be true, that it issued without any such requisition, it is an additional indication of the wisdom of the measure.

It is of much importance to the end of preserving peace, that the belligerant nations should be thoroughly convinced of the sincerity of our intentions to observe the neutrality we profess; and it cannot fail to have weight in producing this conviction, that the declaration of it was a spontaneous act; not stimulated by any requisition on the part of either of them; but proceeding purely from our own view of our duty and interest.

It was not surely necessary for the government to wait for such a requisition; while there were advantages, and no disadvantages, in anticipation. The benefit of an early notification to our merchants, conspired with the consideration just mentioned to recommend the course which was pursued.

If in addition to the rest, the early manifestation of the views of the government has had any effect in fixing the public opinion on the subject, and in counteracting the success of the efforts which, it was to be foreseen, would be made to distract and disunite, this alone would be a great recommendation of the policy of having suffered no delay to intervene.

What has been already said, in this and in preceding papers, affords a full answer to the suggestion, that the proclamation was unnecessary. It would be a waste of time to add more.

But there has been a criticism several times repeated, which may deserve a moment's attention. It has been urged, that the proclamation ought to have contained some reference to our treaties; and that the generality of the promise to observe a conduct *friendly* and *impartial* towards the belligerant powers, ought to have been qualified

with expressions equivalent to these, "*as far as may consist with the treaties of the United States.*"

The insertion of such a clause would have entirely defeated the object of the proclamation, by rendering the intention of the government equivocal. That object was to assure the powers at war and our own citizens, that in the opinion of the executive, it was consistent with the duty and interest of the nation to observe neutrality, and that it was intended to pursue a conduct corresponding with that opinion. Words equivalent to those contended for would have rendered the other part of the declaration nugatory, *by leaving it uncertain, whether the executive did or did not believe a state of neutrality to be consistent with our treaties.* Neither foreign powers, nor our own citizens, would have been able to have drawn any conclusion from the proclamation; and both would have had a right to consider it as a mere equivocation.

By not inserting any such ambiguous expressions, the proclamation was susceptible of an intelligible and proper construction. While it denoted on the one hand, that in the judgment of the executive, there was nothing in our treaties obliging us *to become a party in the war;* it left it to be expected on the other, that all stipulations compatible with neutrality, according to the laws and usages of nations, would be enforced. It follows, that the proclamation was, in this particular, exactly what it ought to have been.

The words, "make known the disposition of the United "States," have also given a pretext for cavil. It has been asked, how could the president undertake to declare the disposition of the United States? The people, for ought he knew, may have a very different sentiment. Thus, a conformity with republican propriety and modesty is turned into a topic of accusation.

Had the president announced his own disposition, he would have been chargeable with egotism, if not presumption. The constitutional organ of intercourse between the United States and foreign nations, whenever he speaks to them, it is in that capacity; it is in the name and on the behalf of the United States. It must therefore be with greater propriety that he speaks of their disposition, than of his own.

It is easy to imagine, that occasions frequently occur in the communications to foreign governments and foreign agents, which render it necessary to speak of the friendship or *friendly disposition* of the United States, of *their disposition* to cultivate harmony and good understanding, to reciprocate neighbourly offices, and the like. It is usual, for example, when public ministers are received, for some complimentary expressions to be interchanged. It is presumable that the late reception of the French minister did not pass, without some assurance on the part of the president, of the friendly disposition of the United States towards France. Admitting it to have happened, would it be deemed an improper arrogation? If not, why was it more so, to declare the disposition of the United States to observe a neutrality in the existing war?

In all such cases, nothing more is to be understood, than an official expression of the *political* disposition of the nation, *inferred* from its political relations, obligations, and interests. It is never to be supposed, that the expression is meant to convey the precise state of the individual sentiments or opinions of the great mass of the people.

Kings and princes speak of their own dispositions; the magistrates of republics, of the dispositions of their nations. The president, therefore, has evidently used the style adapted to his situation, and the criticism upon it is plainly a cavil.

PACIFICUS.

# LETTERS OF HELVIDIUS,

BY

JAMES MADISON.

## No. I.

SEVERAL pieces with the signature of PACIFICUS were lately published, which have been read with singular pleasure and applause, by the foreigners and degenerate citizens among us, who hate our republican government, and the French revolution; whilst the publication seems to have been too little regarded, or too much despised by the steady friends to both.

Had the doctrines inculcated by the writer, with the natural consequences from them, been nakedly presented to the public, this treatment might have been proper. Their true character would then have struck every eye, and been rejected by the feelings of every heart. But they offer themselves to the reader in the dress of an elaborate dissertation; they are mingled with a few truths that may serve them as a passport to credulity; and they are introduced with professions of anxiety for the preservation of peace, for the welfare of the government, and for the respect due to the present head of the executive, that may prove a snare to patriotism.

In these disguises they have appeared to claim the attention I propose to bestow on them: with a view to show, from the publication itself, that under colour of vindicating an important public act, of a chief magistrate who enjoys the confidence and love of his country, principles are advanced which strike at the vitals of its constitution, as well as at its honour and true interest.

As it is not improbable that attempts may be made to

apply insinuations, which are seldom spared when particular purposes are to be answered, to the author of the ensuing observations, it may not be improper to premise, that he is a friend to the constitution, that he wishes for the preservation of peace, and that the present chief magistrate has not a fellow-citizen, who is penetrated with deeper respect for his merits, or feels a purer solicitude for his glory.

This declaration is made with no view of courting a more favorable ear to what may be said than it deserves. The sole purpose of it is, to obviate imputations which might weaken the impressions of truth; and which are the more likely to be resorted to, in proportion as solid and fair arguments may be wanting.

The substance of the first piece, sifted from its inconsistencies and its vague expressions, may be thrown into the following propositions:

That the powers of declaring war and making treaties are, in their nature, executive powers:

That being particularly vested by the constitution in other departments, they are to be considered as exceptions out of the general grant to the executive department:

That being, as exceptions, to be construed strictly, the powers not strictly within them, remain with the executive.

That the executive consequently, as the organ of intercourse with foreign nations, and the interpreter and executor of treaties, and the law of nations, is authorized to expound all articles of treaties, those involving questions of war and peace, as well as others;—to judge of the obligations of the United States to make war or not, under any *casus fœderis* or eventual operation of the contract, relating to war; and to pronounce the state of things resulting from the obligations of the United States, as understood by the executive:

That in particular the executive had authority to judge,

whether in the case of the mutual guaranty between the United States and France, the former were bound by it to engage in the war:

That the executive has, in pursuance of that authority, decided that the United States are not bound:—And

That its proclamation of the 22nd of April last, is to be taken as the effect and expression of that decision.

The basis of the reasoning is, we perceive the extraordinary doctrine, that the powers of making war, and treaties, are in their nature executive; and therefore comprehended in the general grant of executive power, where not especially and strictly excepted out of the grant.

Let us examine this doctrine: and that we may avoid the possibility of mistaking the writer, it shall be laid down in his own words; a precaution the more necessary, as scarce any thing else could outweigh the improbability, that so extravagant a tenet should be hazarded at so early a day, in the face of the public.

His words are—"Two of these [exceptions and qualifi-
"cations to the executive powers] have been already no-
"ticed—the participation of the senate in the *appointment*
"*of officers*, and the *making of treaties*. A *third* remains
"to be mentioned—the right of the legislature to *declare*
"*war, and grant letters of marque and reprisal.*"

Again—"It deserves to be remarked, that as the parti-
"cipation of the senate in the *making of treaties*, and the
"power of the legislature to *declare war*, are *exceptions*
"out of the general *executive power*, vested in the presi-
"dent; they are to be construed *strictly*, and ought to be
"extended no further than is *essential* to their execution."

If there be any countenance to these positions, it must be found either, first, in the writers, of authority, on public law; or, 2d, in the quality and operation of the powers to make war and treaties; or, 3d, in the constitution of the United States.

It would be of little use to enter far into the first source of information, not only because our own reason and our own constitution, are the best guides; but because a just analysis and discrimination of the powers of government, according to their executive, legislative, and judiciary qualities, are not to be expected in the works of the most received jurists, who wrote before a critical attention was paid to those objects, and with their eyes too much on monarchical governments, where all powers are confounded in the sovereignty of the prince. It will be found however, I believe, that all of them, particularly Wolsius, Burlemaqui, and Vatel, speak of the powers to declare war, to conclude peace, and to form alliances, as among the highest acts of the sovereignty; of which the legislative power must at least be an integral and preeminent part.

Writers, such as Locke, and Montesquieu, who have discussed more particularly the principles of liberty and the structure of government, lie under the same disadvantage, of having written before these subjects were illuminated by the events and discussions which distinguish a very recent period. Both of them too are evidently warped by a regard to the particular government of England, to which one of them owed allegiance;* and the other professed an admiration bordering on idolatry. Montesquieu, however, has rather distinguished himself by enforcing the reasons and the importance of avoiding a confusion of the several powers of government, than by enumerating and defining the powers which belong to each particular class. And Locke, notwithstanding the early date of his work on civil government, and the example of his own government before his eyes, admits that the particular powers in question, which, after some of the writers on public law he calls *federative*, are really *distinct* from the *executive*, though almost al-

* The chapter on prerogative shows, how much the reason of the philosopher was clouded by the royalism of the Englishman.

ways united with it, and *hardly to be separated into distinct hands*. Had he not lived under a monarchy, in which these powers were united; or had he written by the lamp which truth now presents to lawgivers, the last observation would probably never have dropped from his pen. But let us quit a field of research which is more likely to perplex than to decide, and bring the question to other tests of which it will be more easy to judge.

2. If we consult, for a moment, the nature and operation of the two powers to declare war and to make treaties, it will be impossible not to see, that they can never fall within a proper definition of executive powers. The natural province of the executive magistrate is to execute laws, as that of the legislature is to make laws. All his acts, therefore, properly executive, must presuppose the existence of the laws to be executed. A treaty is not an execution of laws: it does not presuppose the existence of laws. It is, on the contrary, to have itself the force of a *law*, and to be carried into *execution*, like all *other laws*, by the *executive magistrate*. To say then that the power of making treaties, which are confessedly laws, belongs naturally to the department which is to execute laws, is to say, that the executive department naturally includes a legislative power. In theory this is an absurdity—in practice a tyranny.

The power to declare war is subject to similar reasoning. A declaration that there shall be war, is not an execution of laws: it does not suppose preexisting laws to be executed: it is not, in any respect, an act merely executive. It is, on the contrary, one of the most deliberative acts that can be performed; and when performed, has the effect of *repealing* all the *laws* operating in a state of peace, so far as they are inconsistent with a state of war; and of *enacting*, as a *rule for the executive*, a *new code* adapted

to the relation between the society and its foreign enemy. In like manner, a conclusion of peace *annuls* all the *laws* peculiar to a state of war, and *revives* the general *laws* incident to a state of peace.

These remarks will be strengthened by adding, that treaties, particularly treaties of peace, have sometimes the effect of changing not only the external laws of the society, but operate also on the internal code, which is purely municipal, and to which the legislative authority of the country is of itself competent and complete.

From this view of the subject it must be evident, that although the executive may be a convenient organ of preliminary communications with foreign governments, on the subjects of treaty or war; and the proper agent for carrying into execution the final determinations of the competent authority; yet it can have no pretensions, from the nature of the powers in question compared with the nature of the executive trust, to that essential agency which gives validity to such determinations.

It must be further evident, that if these powers be not in their nature purely legislative, they partake so much more of that, than of any other quality, that under a constitution leaving them to result to their most natural department, the legislature would be without a rival in its claim.

Another important inference to be noted is, that the powers of making war and treaty being substantially of a legislative, not an executive nature, the rule of interpreting exceptions strictly must narrow, instead of enlarging, executive pretensions on those subjects.

3. It remains to be inquired, whether there be any thing in the constitution itself, which shows, that the powers of making war and peace are considered as of an executive nature, and as comprehended within a general grant of executive power.

It will not be pretended, that this appears from any *direct* position to be found in the instrument.

If it were *deducible* from any particular expressions, it may be presumed, that the publication would have saved us the trouble of the research.

Does the doctrine, then, result from the actual distribution of powers among the several branches of the government? or from any fair analogy between the powers of war and treaty, and the enumerated powers vested in the executive alone?

Let us examine:

In the general distribution of powers, we find that of declaring war expressly vested in the congress, where every other legislative power is declared to be vested; and without any other qualification than what is common to every other legislative act. The constitutional idea of this power would seem then clearly to be, that it is of a legislative, and not an executive nature.

This conclusion becomes irresistible, when it is recollected, that the constitution cannot be supposed to have placed either any power legislative in its nature, entirely among executive powers, or any power executive in its nature, entirely among legislative powers, without charging the constitution, with that kind of intermixture and consolidation of different powers, which would violate a fundamental principle in the organization of free governments. If it were not unnecessary to enlarge on this topic here, it could be shown, that the constitution was originally vindicated, and has been constantly expounded, with a disavowal of any such intermixture.

The power of treaties is vested jointly in the president and in the senate, which is a branch of the legislature. From this arrangement merely, there can be no inference that would necessarily exclude the power from the execu-

tive class: since the senate is joined with the president in another power, that of appointing to offices, which, as far as relate to executive offices at least, is considered as of an executive nature. Yet on the other hand, there are sufficient indications that the power of treaties is regarded by the constitution as materially different from mere executive power, and as having more affinity to the legislative than to the executive character.

One circumstance indicating this, is the constitutional regulation under which the senate give their consent in the case of treaties. In all other cases, the consent of the body is expressed by a majority of voices. In this particular case, a concurrence of two-thirds at least is made necessary, as a substitute or compensation for the other branch of the legislature, which, on certain occasions, could not be conveniently a party to the transaction.

But the conclusive circumstance is, that treaties, when formed according to the constitutional mode, are confessedly to have the force and operation of *laws*, and are to be a rule for the courts in controversies between man and man, as much as any *other laws*. They are even emphatically declared by the constitution to be "the supreme law of the land."

So far the argument from the constitution is precisely in opposition to the doctrine. As little will be gained in its favour from a comparison of the two powers, with those particularly vested in the president alone.

As there are but few, it will be most satisfactory to review them one by one.

"The president shall be commander in chief of the army "and navy of the United States, and of the militia when "called into the actual service of the United States."

There can be no relation worth examining between this power and the general power of making treaties. And in-

stead of being analogous to the power of declaring war, it affords a striking illustration of the incompatibility of the two powers in the same hands. Those who are to *conduct a war* cannot in the nature of things, be proper or safe judges, whether *a war ought* to be *commenced*, *continued*, or *concluded*. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws.

"He may require the opinion in writing of the principal "officers in each of the executive departments upon any "subject relating to the duties of their respective offices; "and he shall have power to grant reprieves and pardons "for offences against the United States, except in case of "impeachment." These powers can have nothing to do with the subject.

"The president shall have power to fill up vacancies that "may happen during the recess of the Senate, by granting "commissions which shall expire at the end of the next "session." The same remark is applicable to this power, as also to that of "receiving ambassadors, other public "ministers, and consuls." The particular use attempted to be made of this last power will be considered in another place.

"He shall take care that the laws shall be faithfully "executed, and shall commission all officers of the United "States." To see the laws faithfully executed constitutes the essence of the executive authority. But what relation has it to the power of making treaties and war, that is, of determining what the *laws shall be* with regard to other nations? No other certainly than what subsists between the powers of executing and enacting laws; no other, consequently, than what forbids a coalition of the powers in the same department.

I pass over the few other specified functions assigned to the president, such as that of convening the legislature, &c., &c., which cannot be drawn into the present question.

It may be proper however to take notice of the power of removal from office, which appears to have been adjudged to the president by the laws establishing the executive departments; and which the writer has endeavoured to press into his service. To justify any favourable inference from this case, it must be shown, that the powers of war and treaties are of a kindred nature to the power of removal, or at least are equally within a grant of executive power. Nothing of this sort has been attempted, nor probably will be attempted. Nothing can in truth be clearer, than that no analogy, or shade of analogy, can be traced between a power in the supreme officer responsible for the faithful execution of the laws, to displace a subaltern officer employed in the execution of the laws; and a power to make treaties, and to declare war, such as these have been found to be in their nature, their operation, and their consequences.

Thus it appears that by whatever standard we try this doctrine, it must be condemned as no less vicious in theory than it would be dangerous in practice. It is countenanced neither by the writers on law; nor by the nature of the powers themselves; nor by any general arrangements, or particular expressions, or plausible analogies, to be found in the constitution.

Whence then can the writer have borrowed it?

There is but one answer to this question.

The power of making treaties and the power of declaring war, are *royal prerogatives* in the *British government*, and are accordingly treated as *executive prerogatives* by *British commentators*.

We shall be the more confirmed in the necessity of this

solution of the problem, by looking back to the area of the constitution, and satisfying ourselves that the writer could not have been misled by the doctrines maintained by our own commentators on our own government. That I may not ramble beyond prescribed limits, I shall content myself with an extract from a work which entered into a systematic explanation and defence of the constitution; and to which there has frequently been ascribed some influence in conciliating the public assent to the government in the form proposed. Three circumstances conspire in giving weight to this cotemporary exposition. It was made at a time when no application to *persons or measures* could bias: the opinion given was not transiently mentioned, but formally and critically elucidated: it related to a point in the constitution which must consequently have been viewed as of importance in the public mind. The passage relates to the power of making treaties; that of declaring war, being arranged with such obvious propriety among the legislative powers, as to be passed over without particular discussion.

"Though several writers on the subject of government "place that power [*of making treaties*] in the class of "*executive authorities*, yet this is *evidently* an *arbitrary* "*disposition*. For if we attend *carefully* to its operation, "it will be found to partake *more* of the *legislative* than of "the *executive* character, though it does not seem strictly "to fall within the definition of either of them. The es- "sence of the legislative authority, is to enact laws; or, in "other words, to prescribe rules for the regulation of the "society: while the execution of the laws and the employ- "ment of the common strength, either for this purpose, or "for the common defence, seem to comprise *all* the func- "tions of the *executive magistrate*. The power of making "treaties is *plainly* neither the one nor the other. It re-

"lates neither to the execution of the subsisting laws, nor "to the enaction of new ones, and still less to an exertion "of the common strength. Its objects are contracts with "foreign nations, which have the *force of law*, but derive "it from the obligations of good faith. They are not rules "prescribed by the sovereign to the subject, but agreements "between sovereign and sovereign. The power in ques- "tion seems therefore to form a distinct department, and "to belong properly neither to the legislative nor to the "executive. The qualities elsewhere detailed as indispen- "sable in the management of foreign *negotiations*, point out "the executive as the most fit agent in those transactions; "whilst the vast importance of the trust, and the operation "of treaties *as laws*, plead strongly for the participation of "the whole or a part of the *legislative body*, in the office "of making them." Federalist, p. 418.*

It will not fail to be remarked on this commentary, that whatever doubts may be started as to the correctness of its reasoning against the legislative nature of the power to make treaties; it is *clear*, *consistent*, and *confidant*, in deciding that the power is *plainly* and *evidently* not an *executive power.*

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## No. II.

The doctrine which has been examined, is pregnant with inferences and consequences, against which no ramparts in the constitution could defend the public liberty, or scarcely the forms of republican government. Were it once established that the powers of war and treaty are in their nature executive; that so far as they are not by strict construction transferred to the legislature, they actually belong to the executive; that of course all powers not less executive in their nature than those powers, if not granted to the

* No. 75, written by Mr. Hamilton.

legislature, may be claimed by the executive; if granted, are to be taken *strictly*, with a residuary right in the executive; or, as will hereafter appear, perhaps claimed as a concurrent right by the executive; and no citizen could any longer guess at the character of the government under which he lives; the most penetrating jurist would be unable to scan the extent of constructive prerogative.

Leaving however to the leisure of the reader deductions which the author, having omitted, might not choose to own, I proceed to the examination of one, with which that liberty cannot be taken.

"However true it may be, (says he,) that the right of the "legislature to declare war *includes the right of judging*, "whether the legislature be under obligations to make war "or not, it will not follow that the executive is *in any case* "excluded from a *similar right* of judging in the execution "of its own functions."

A material error of the writer, in this application of his doctrine, lies in his shrinking from its regular consequences. Had he stuck to his principle in its full extent, and reasoned from it without restraint, he would only have had to defend himself against his opponents. By yielding the great point, that the right to declare war, *though to be taken strictly*, includes the right to judge, whether the nation be under obligation to make war or not, he is compelled to defend his argument, not only against others, but against himself also. Observe, how he struggles in his own toils.

He had before admitted, that the right to declare war is vested in the legislature. He here admits, that the right to declare war includes the right to judge, whether the United States be obliged to declare war or not. Can the inference be avoided, that the executive, instead of having a similar right to judge, is as much excluded from the right to judge as from the right to declare?

If the right to declare war be an exception out of the general grant to the executive power, every thing included in the right must be included in the exception; and, being included in the exception, is excluded from the grant.

He cannot disentangle himself by considering the right of the executive to judge as *concurrent* with that of the legislature: for if the executive have a concurrent right to judge, and the right to judge be included in (it is in fact the very essence of) the right to declare, he must go on and say, that the executive has a concurrent right also to declare. And then, what will he do with his other admission, that the power to declare is an exception out of the executive power?

Perhaps an attempt may be made to creep out of the difficulty through the words, "in the execution of its functions." Here, again, he must equally fail.

Whatever difficulties may arise in defining the executive authority in particular cases, there can be none in deciding on an authority clearly placed by the constitution in another department. In this case, the constitution has decided what shall not be deemed an executive authority; though it may not have clearly decided in every case what shall be so deemed. The declaring of war is expressly made a legislative function. The judging of the obligations to make war, is admitted to be included as a legislative function. Whenever, then, a question occurs, whether war shall be declared, or whether public stipulations require it, the question necessarily belongs to the department to which those functions belong—and no other department can be *in the execution of its proper functions*, if it should undertake to decide such a question.

There can be no refuge against this conclusion, but in the pretext of a *concurrent* right in both departments to judge of the obligations to declare war; and this must be

intended by the writer, when he says, "It will not follow, "that the executive is excluded *in any case* from a *similar* "*right* of judging," &c.

As this is the ground on which the ultimate defence is to be made, and which must either be maintained, or the works erected on it demolished; it will be proper to give its strength a fair trial.

It has been seen, that the idea of a *concurrent* right is at variance with other ideas, advanced or admitted by the writer. Laying aside, for the present, that consideration, it seems impossible to avoid concluding, that if the executive, as such, has a concurrent right with the legislature to judge of obligations to declare war, and the right to judge be essentially included in the right to declare, it must have the same concurrent right to declare, as it has to judge; and, by another analogy, the same right to judge of other causes of war, as of the particular cause found in a public stipulation. So that whenever the executive, *in the course of its functions*, shall meet with these cases, it must either infer an equal authority in all, or acknowledge its want of authority in any.

If any doubt can remain, or rather if any doubt could ever have arisen, which side of the alternative ought to be embraced, it can be with those only who overlook or reject some of the most obvious and essential truths in political science.

The power to judge of the causes of war, as involved in the power to declare war, is expressly vested, where all other legislative powers are vested, that is, in the congress of the United States. It is consequently determined by the constitution to be a *legislative power*. Now, omitting the inquiry here, in what respects a compound power may be partly legislative, and partly executive, and accordingly vested *partly* in the one, and *partly* in the other depart-

ment, or *jointly* in both; a remark used on another occasion is equally conclusive on this, that the same power cannot belong, *in the whole* to *both* departments, or be properly so vested as to operate *separately* in *each.* Still more evident is it, that the same *specific function or act*, cannot possibly belong to the *two* departments, and be *separately* exerciseable by *each.*

Legislative power may be *concurrently* vested in different legislative bodies. Executive powers may be concurrently vested in different executive magistrates. In legislative acts the executive may have a participation, as in the qualified negative on the laws. In executive acts, the legislature, or at least a branch of it, may participate, as in the appointment to offices. Arrangements of this sort are familiar in theory, as well as in practice. But an independent exercise of an *executive act* by the legislature *alone*, or of a *legislative* act by the executive *alone*, one or other of which must happen in every case where the same act is exerciseable by each, and the latter of which would happen in the case urged by the writer, is contrary to one of the first and best maxims of a well-organized government, and ought never to be founded in a forced construction, much less in opposition to a fair one. Instances, it is true, may be discovered among ourselves, where this maxim has not been faithfully pursued; but being generally acknowledged to be errors, they confirm, rather than impeach the truth and value of the maxim.

It may happen also, that different independent departments, the legislative and executive, for example, may, in the exercise of their functions, interpret the constitution differently, and thence lay claim each to the same power. This difference of opinion is an inconvenience not entirely to be avoided. It results from what may be called, if it be thought fit, a *concurrent* right to expound the constitution.

But *this species* of concurrence is obviously and radically different from that in question. The former supposes the constitution to have given the power to one department only; and the doubt to be, to which it has been given. The latter supposes it to belong to both; and that it may be exercised by either or both, according to the course of exigencies.

A concurrent authority in two independent departments, to perform the same function with respect to the same thing, would be as awkward in practice, as it is unnatural in theory.

If the legislature and executive have both a right to judge of the obligations to make war or not, it must sometimes happen, though not at present, that they will judge differently. The executive may proceed to consider the question to-day; may determine that the United States are not bound to take part in a war, and, *in the execution of its functions*, proclaim that determination to all the world. To-morrow, the legislature may follow in the consideration of the same subject; may determine that the obligations impose war on the United States, and, *in the execution of its functions* enter into a *constitutional declaration*, expressly contradicting the *constitutional proclamation.*

In what light does this present the constitution to the people who established it? In what light would it present to the world a nation, thus speaking, through two different organs, equally constitutional and authentic, two opposite languages, on the same subject, and under the same existing circumstances?

But it is not with the legislative rights alone that this doctrine interferes. The rights of the judiciary may be equally invaded. For it is clear that if a right declared by the constitution to be legislative, and actually vested by it in the legislature, leaves, notwithstanding, a similar right

in the executive, whenever a case for exercising it occurs, *in the course of its functions;* a right declared to be judiciary and vested in that department may, on the same principle, be assumed and exercised by the executive *in the course of its functions;* and it is evident that occasions and pretexts for the latter interference may be as frequent as for the former. So again the judiciary department may find equal occasions in the execution of *its* functions, for usurping the authorities of the executive; and the legislature for stepping into the jurisdiction of both. And thus all the powers of government, of which a partition is so carefully made among the several branches, would be thrown into absolute hotchpot, and exposed to a general scramble.

It is time however for the writer himself to be heard, in defence of his text. His comment is in the words following:

"If the legislature have a right to make war on the one "hand, it is on the other the duty of the executive to pre- "serve peace, till war is declared; and in fulfilling that "duty, it must necessarily possess a right of judging what "is the nature of the obligations which the treaties of the "country impose on the government; and when, in pursu- "ance of this right, it has concluded that there is nothing "inconsistent with a state of neutrality, it becomes both its "province and its duty to enforce the laws incident to that "state of the nation. The executive is charged with the "execution of all laws, the laws of nations, as well as the "municipal law which recognises and adopts those laws. "It is consequently bound, by faithfully executing the laws "of neutrality, when that is the state of the nation, to avoid "giving a cause of war to foreign powers."

To do full justice to this masterpiece of logic, the reader must have the patience to follow it step by step.

*If the legislature have a right to make war on the one hand, it is, on the other, the duty of the executive to preserve peace till war is declared.*

It will be observed that here is an explicit and peremptory assertion, that it is the *duty* of the executive *to preserve peace* till *war is declared.*

*And in fulfilling that duty it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the country impose on the government:* That is to say, in fulfilling *the duty to preserve peace*, it must necessarily possess the right to judge whether *peace ought to be preserved;* in other words, *whether its duty should be performed.* Can words express a flatter contradiction? It is self-evident that the *duty* in this case is so far from *necessarily implying the right*, that it *necessarily excludes it.*

*And when in pursuance of this right it has concluded that there is nothing in them (obligations) inconsistent with a state of neutrality*, IT BECOMES *both its province and its duty to enforce the laws incident to that state of the nation.*

And what if it should conclude that there is something inconsistent? Is it or is it not the province and duty of the executive to enforce the same laws? Say it is, you destroy the right to judge. Say it is not, you cancel the duty to preserve peace, till war is declared.

Take this sentence in connexion with the preceding, and the contradictions are multiplied. Take it by itself, and it makes the right to judge and conclude, whether war be obligatory, absolute and operative; and the duty to preserve peace subordinate and conditional.

It will have been remarked by the attentive reader, that the term *peace* in the first clause has been silently exchanged in the present one, for the term *neutrality.* No-

thing however is gained by shifting the terms. Neutrality means peace, with an allusion to the circumstance of other nations being at war. The term has no reference to the existence or nonexistence of treaties or alliances between the nation at peace and the nations at war. The laws incident to a state of neutrality, are the laws incident to a state of peace, with such circumstantial modifications only as are required by the new relation of the nations at war: until war therefore be duly authorized by the United States, they are as *actually* neutral when other nations are at war, as they are at peace (if such a distinction in the terms is to be kept up) when other nations are not at war. The existence of *eventual* engagements which can only take effect on the declaration of the legislature, cannot, without that declaration, change the *actual* state of the country, any more in the eye of the executive than in the eye of the judiciary department. The laws to be the guide of both, remain the same to each, and the same to both.

Nor would more be gained by allowing the writer to define, than to shift the term neutrality. For suppose, if you please, the existence of obligations to join in war to be inconsistent with neutrality, the question returns upon him, what laws are to be enforced by the executive, until effect shall be given to those obligations by the declaration of the legislature? Are they to be the laws incident to those obligations, that is, incident to war? However strongly the doctrines or deductions of the writer may tend to this point, it will not be avowed. Are the laws to be enforced by the executive, then, in such a state of things, to be the *same* as if no such obligations existed? Admit this, which you must admit, if you reject the other alternative, and the argument lands precisely where it embarked—in the position, that it is the absolute duty of the executive in *all* cases to preserve peace till war is declared, not that it is "*to become*

"the province and duty of the executive" after it has concluded that there is nothing in those obligations inconsistent with a state of peace and neutrality. The right to judge and conclude therefore, so solemnly maintained in the text, is lost in the comment.

We shall see, whether it can be reinstated by what follows:

*The executive is charged with the execution of all laws, the laws of nations as well as the municipal law which recognises and adopts those laws. It is consequently bound, by faithfully executing the laws of neutrality when that is the state of the nation, to avoid giving cause of war to foreign powers.*

The first sentence is a truth, but nothing to the point in question. The last is *partly true* in its proper meaning, but *totally untrue* in the meaning of the writer. That the executive is bound faithfully to execute the laws of neutrality, whilst those laws continue unaltered by the competent authority, is true; but not for the reason here given, to wit, to avoid giving cause of war to foreign powers. It is bound to the faithful execution of these as of all other laws internal and external, by the nature of its trust and the sanction of its oath, even if turbulent citizens should consider its so doing as a cause of war at home, or unfriendly nations should consider its so doing as a cause of war abroad. The duty of the executive to preserve external peace, can no more suspend the force of external laws, than its duty to preserve internal peace can suspend the force of municipal laws.

It is certain that a faithful execution of the laws of neutrality may tend as much in some cases, to incur war from one quarter, as in others to avoid war from other quarters. The executive must nevertheless execute the laws of neutrality whilst in force, and leave it to the legislature to decide, whether they ought to be altered or not. The exe-

cutive has no other discretion than to convene and give information to the legislature on occasions that may demand it; and whilst this discretion is duly exercised, the trust of the executive is satisfied, and that department is not responsible for the consequences. It could not be made responsible for them without vesting it with the legislative as well as with the executive trust.

These remarks are obvious and conclusive, on the supposition that the expression "laws of neutrality" means simply what the words import, and what alone they can mean, to give force or colour to the inference of the writer from his own premises. As the inference itself however, in its proper meaning, does not approach towards his avowed object, which is to work out a prerogative for the executive to judge, in common with the legislature, whether there be cause of war or not in a public obligation, it is to be presumed that "in faithfully executing the laws of neu-"trality," an exercise of that prerogative was meant to be included. On this supposition the inference, as will have been seen, does not result from his own premises, and has been already so amply discussed, and, it is conceived, so clearly disproved, that not a word more can be necessary on this branch of his argument.

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## No. III.

In order to give colour to a right in the executive to exercise the legislative power of judging, whether there be a cause of war in a public stipulation—two other arguments are subjoined by the writer to that last examined.

The first is simply this: "It is the right and duty of the "executive to judge of and interpret those articles of our "treaties which give to France particular privileges, *in or-*"*der to the enforcement of those privileges*:" from which it is stated, as a necessary consequence, that the executive

has certain other rights, among which is the right in question.

This argument is answered by a very obvious distinction. The first right is essential to the execution of the treaty, *as a law in operation*, and interferes with no right vested in another department. The second, viz., the right in question, is not essential to the execution of the treaty, or any other law: on the contrary, the article to which the right is applied cannot, as has been shown, from the very nature of it, be *in operation* as a law, without a previous declaration of the legislature; and all the laws to be *enforced* by the executive remain, in the mean time, precisely the same, whatever be the disposition or judgment of the executive. This second right would also interfere with a right acknowledged to be in the legislative department.

If nothing else could suggest this distinction to the writer, he ought to have been reminded of it by his own words, "in order to the enforcement of those privileges"—Was it in order to *the enforcement* of the article of guaranty, that the right is ascribed to the executive?

The other of the two arguments reduces itself into the following form: the executive has the right to receive public ministers; this right includes the right of deciding, in the case of a revolution, whether the new government, sending the minister, ought to be recognised, or not; and this, again, the right to give or refuse operation to preexisting treaties.

The power of the legislature to declare war, and judge of the causes for declaring it, is one of the most express and explicit parts of the constitution. To endeavour to abridge or *affect* it by strained inferences, and by hypothetical or singular occurrences, naturally warns the reader of some lurking fallacy.

The words of the constitution are, "He (the president)

"shall receive ambassadors, other public ministers, and "consuls." I shall not undertake to examine, what would be the precise extent and effect of this function in various cases which fancy may suggest, or which time may produce. It will be more proper to observe, in general, and every candid reader will second the observation, that little, if any thing, more was intended by the clause, than to provide for a particular mode of communication, *almost* grown into a right among modern nations; by pointing out the department of the government, most proper for the ceremony of admitting public ministers, of examining their credentials, and of authenticating their title to the privileges annexed to their character by the law of nations. This being the apparent design of the constitution, it would be highly improper to magnify the function into an important prerogative, even where no rights of other departments could be affected by it.

To show that the view here given of the clause is not a new construction, invented or strained for a particular occasion—I will take the liberty of recurring to the cotemporary work already quoted, which contains the obvious and original gloss put on this part of the constitution by its friends and advocates.

"The president is also to be authorized to receive am- "bassadors and other public ministers. This, though it "has been a rich theme of declamation, is more a matter "of *dignity* than of *authority*. It is a circumstance, that "will be *without consequence* in the administration of the "government, and it is far more convenient that it should "be arranged in this manner, than that there should be a "necessity for convening the legislature or one of its bran- "ches upon every arrival of a foreign minister, though it "were merely to take the place of a departed predeces- "sor." Fed. p. 389.*

* No. 69. written by Mr. Hamilton.

Had it been foretold in the year 1788, when this work was published, that before the end of the year 1793, a writer, assuming the merit of being a friend to the constitution, would appear, and gravely maintain, that this function, which was to be *without consequence* in the administration of the government, might have the consequence of deciding on the validity of revolutions in favour of liberty, "of putting the United States in a condition to become an "associate in war"—nay, "of laying the *legislature* under "an *obligation* of *declaring* war," what would have been thought and said of so visionary a prophet?

The moderate opponents of the constitution would probably have disowned his extravagance. By the advocates of the constitution, his prediction must have been treated as "an experiment on public credulity, dictated either by a "deliberate intention to deceive, or by the overflowings of "a zeal too intemperate to be ingenuous."

But how does it follow from the function to receive ambassadors and other public ministers, that so consequential a prerogative may be exercised by the executive? When a foreign minister presents himself, two questions immediately arise: Are his credentials from the existing and acting government of his country? Are they properly authenticated? These questions belong of necessity to the executive; but they involve no cognizance of the question, whether those exercising the government have the right along with the possession. This belongs to the nation, and to the nation alone, on whom the government operates. The questions before the executive are merely questions of fact; and the executive would have precisely the same right, or rather be under the same necessity of deciding them, if its function was simply to receive *without any discretion to reject* public ministers. It is evident, therefore, that if the executive has a right to reject a public minister,

it must be founded on some other consideration than a change in the government, or the newness of the government; and consequently a right to refuse to acknowledge a new government cannot be implied by the right to refuse a public minister.

It is not denied that there may be cases in which a respect to the general principles of liberty, the essential rights of the people, or the overruling sentiments of humanity, might require a government, whether new or old, to be treated as an illegitimate despotism. Such are in fact discussed and admitted by the most approved authorities. But they are great and extraordinary cases, by no means submitted to so limited an organ of the national will as the executive of the United States; and certainly not to be brought by any torture of words, within the right to receive ambassadors.

That the authority of the executive does not extend to a question, whether an *existing* government ought to be recognised or not, will still more clearly appear from an examination of the next inference of the writer, to wit: that the executive has a right to give or refuse activity and operation to preexisting treaties.

If there be a principle that ought not to be questioned within the United States, it is, that every nation has a right to abolish an old government and establish a new one. This principle is not only recorded in every public archive, written in every American heart, and sealed with the blood of a host of American martyrs; but is the only lawful tenure by which the United States hold their existence as a nation.

It is a principle incorporated with the above, that governments are established for the national good, and are organs of the national will.

From these two principles results a third, that treaties

formed by the government, are treaties of the nation, unless otherwise expressed in the treaties.

Another consequence is, that a nation, by exercising the right of changing the organ of its will, can neither disengage itself from the obligations, nor forfeit the benefits of its treaties. This is a truth of vast importance, and happily rests with sufficient firmness, on its own authority. To silence or prevent cavil, I insert, however, the following extracts: "Since then such a treaty (a treaty not *personal* to the sovereign) directly relates to the body of the "state, it subsists though the form of the republic happens "to be changed, and though it should be even transformed "into a monarchy—for the state and the nation are always "the same, whatever changes are made in the form of the "government—and the treaty concluded with the nation, "remains in force as long as the nation exists."—Vatel, B. II, § 85. "It follows that as a treaty, notwithstanding the "change of a democratic government into a monarchy, "continues in force with the new king, in like manner, if a "*monarchy* becomes a *republic*, the treaty made with the "king does not expire on that account, unless it was mani-"festly personal."—Burlam. part IV, c. IX, § 16, ¶ 6.

As a change of government then makes no change in the obligations or rights of the party to a treaty, it is clear that the executive can have no more right to suspend or prevent the operation of a treaty, on account of the change, than to suspend or prevent the operation, where no such change has happened. Nor can it have any more right to suspend the operation of a treaty in force as a law, than to suspend the operation of any other law.

The logic employed by the writer on this occasion, will be best understood by accommodating to it the language of a proclamation, founded on the prerogative and policy of suspending the treaty with France.

Whereas a treaty was concluded on the ——— day of ——— between the United States and the French nation, through the kingly government, which was then the organ of its will: and whereas the said nation hath since exercised its right (nowise abridged by the said treaty) of changing the organ of its will, by abolishing the said kingly government, as inconsistent with the rights and happiness of the people, and establishing a republican in lieu thereof, as most favourable to the public happiness, and best suited to the genius of a people become sensible of their rights and ashamed of their chains: and whereas, by the constitution of the United States, the executive is authorized to receive ambassadors, other public ministers, and consuls: and whereas a public minister, duly appointed and commissioned by the new republic of France, hath arrived and presented himself to the executive, in order to be received in his proper character, now be it known, that by virtue of the said right vested in the executive to receive ambassadors, other public ministers and consuls, and of the rights included therein, the executive hath refused to receive the said minister from the said republic, and hath thereby caused the activity and operation of all treaties with the French nation, *hitherto in force as supreme laws of the land*, to be suspended until the executive, by taking off the said suspension, shall revive the same: of which all persons concerned are to take notice at their peril.

The writer, as if beginning to feel that he was grasping at more than he could hold, endeavours all of a sudden to squeeze his doctrine into a smaller size, and a less vulnerable shape. The reader shall see the operation in his own words.

"And where *a treaty* antecedently exists between the "United States and such nation, [a nation whose gov- "ernment has undergone a revolution,] that right [the right

" of judging, whether the new rulers ought to be recognised
" or not] involves the power of giving operation or not to
" *such treaty. For* until the new government is acknow-
" ledged, the treaties between the nations *as far at least*
" as regards *public rights*, are *of course* suspended."

This qualification of the suspending power, though reluctantly and inexplicitly made, was prudent, for two reasons: first, because it is pretty evident that *private rights*, whether of judiciary or executive cognizance, may be carried into effect without the agency of the foreign government: and therefore would not be suspended, of course, by a rejection of that agency: secondly, because the judiciary, being an independent department, and acting under an oath to pursue the law of treaties as the supreme law of the land, might not readily follow the executive example; and a *right* in *one expositor* of treaties, to consider them as *not in force*, whilst it would be the *duty* of *another expositor* to consider them as *in force*, would be a phenomenon not so easy to be explained. Indeed, as the doctrine stands qualified, it leaves the executive the right of suspending the law of treaties in relation to rights of one description, without exempting it from the duty of enforcing it in relation to rights of another description.

But the writer is embarked in so unsound an argument, that he does not save the rest of his inference by this sacrifice of one half of it. It is not true, that *all public rights* are of course suspended by a refusal to acknowledge the government, or even by a suspension of the government. And in the next place, the right in question does not follow from the necessary suspension of public rights, in consequence of a refusal to acknowledge the government.

Public rights are of two sorts: those which require the agency of government; those which may be carried into effect without that agency.

As public rights are the rights of the nation, not of the government, it is clear, that wherever they can be made good to the nation, without the office of government, they are not suspended by the want of an acknowledged government, or even by the want of an existing government; and that there are important rights of this description, will be illustrated by the following case.

Suppose, that after the conclusion of the treaty of alliance between the United States and France, a party of the enemy had surprised and put to death every member of congress; that the occasion had been used by the people of America for changing the old confederacy into such a government as now exists, and that in the progress of this revolution, an interregnum had happened: suppose further, that during this interval, the states of South Carolina and Georgia, or any other parts of the United States, had been attacked, and been put into evident and imminent danger of being irrecoverably lost, without the interposition of the French arms; is it not manifest, that as the treaty is the treaty of the United States, not of their government, the people of the United States could not forfeit their right to the guaranty of their territory by the accidental suspension of their government; and that any attempt, on the part of France, to evade the obligations of the treaty, by pleading the suspension of government, or by refusing to acknowledge it, would justly have been received with universal indignation, as an ignominious perfidy?

With respect to public rights that cannot take effect in favour of a nation without the agency of its government, it is admitted that they are suspended of course where there is no government in existence, and also by a refusal to acknowledge an existing government. But no inference in favour of *a right* to suspend the operation of treaties, can be drawn from either case. Where the existence of the

government is suspended, it is a case of necessity; it would be a case happening without the act of the executive, and consequently could prove nothing for or against the right.

In the other case, to wit, of a refusal by the executive to recognise an *existing government*, however certain it may be, that a suspension of some of the public rights might ensue; yet it is equally certain, that the refusal would be without right or authority; and that no right or authority could be implied or produced by the unauthorized act. If a right to do whatever might bear an analogy to the necessary consequence of what was done without right, could be inferred from the analogy, there would be no other limit to power than the limit to its ingenuity.

It is no answer to say that it may be doubtful, whether a government does or does not exist; or doubtful which may be the existing and acting government. The case stated by the writer is, that there are existing rulers; that there is an acting government; but that they are *new* rulers; and that it is a *new* government. The full reply, however, is to repeat what has been already observed; that questions of this sort are mere questions of fact; that as such only, they belong to the executive, that they would equally belong to the executive, if it was tied down to the reception of public ministers, without any discretion to receive or reject them; that where the fact appears to be, that no government exists, the consequential suspension is independent of the executive; that where the fact appears to be, that the government does exist, the executive must be governed by the fact, and can have no right or discretion, on account of the date or form of the government, to refuse to acknowledge it, either by rejecting its public minister, or by any other step taken on that account. If it does refuse on that account, the refusal is a wrongful act, and can neither prove nor illustrate a rightful power.

I have spent more time on this part of the discussion than may appear to some, to have been requisite. But it was considered as a proper opportunity for presenting some important ideas, connected with the general subject, and it may be of use in showing how very superficially, as well as erroneously, the writer has treated it.

In other respects, so particular an investigation was less necessary. For allowing it to be, as contended, that a suspension of treaties might happen from a *consequential* operation of a right to receive public ministers, which is an *express right* vested by the constitution; it could be no proof, that the same or a *similar* effect could be produced by the *direct* operation of a *constructive power.*

Hence the embarrassments and gross contradictions of the writer in defining, and applying his ultimate inference from the operation of the executive power with regard to public ministers.

At first it exhibits an "important instance of the right of "the executive to decide the obligation of the nation with "regard to foreign nations."

Rising from that, it confers on the executive, a right "to "put the United States in a condition to become an asso- "ciate in war."

And at its full height, it authorizes the executive "to lay "the legislature under *an obligation* of declaring war."

From this towering prerogative, it suddenly brings down the executive to the right of "*consequentially affecting* the "proper or improper exercise of the power of the legisla- "ture to declare war."

And then, by a caprice as unexpected as it is sudden, it espouses the cause of the legislature; rescues it from the executive right "to lay it under an *obligation* of declaring "war;" and asserts it to be "free to perform its *own* du- "ties according to its *own* sense of them," without any

other control than what it is liable to, in every other legislative act.

The point at which it finally seems to rest, is, that "the "executive, in the exercise of its *constitutional powers*, "may establish an antecedent state of things, which ought "to *weigh* in the *legislative decisions;*" a prerogative which will import a great deal, or nothing, according to the handle by which you take it; and which at the same time, you can take by no handle that does not clash with some inference preceding.

If "by weighing in the legislative decisions" be meant having *an influence* on the *expediency* of this or that decision, in the *opinion* of the legislature; this is no more than what every antecedent state of things ought to have, from whatever cause proceeding; whether from the use or abuse of constitutional powers, or from the exercise of constitutional or assumed powers. In this sense, the power to establish an antecedent state of things is not contested. But then it is of no use to the writer, and is also in direct contradiction to the inference, that the executive may "lay "the *legislature* under an *obligation* to decide in favour of "*war.*"

If the meaning be as is implied by the force of the terms "constitutional powers," that the antecedent state of things produced by the executive, ought to have a *constitutional weight* with the legislature; or, in plainer words, imposes a *constitutional obligation* on the *legislative decisions;* the writer will not only have to combat the arguments by which such a prerogative has been disproved; but to reconcile it with his last concession, that "the legis- "lature is *free* to perform its duties according to its *own* "sense of them." He must show that the legislature is, at the same time *constitutionally free* to pursue its *own judgment*, and *constitutionally bound* by the *judgment of the executive.*

## No. IV.

The last papers completed the view proposed to be taken of the arguments in support of the new and aspiring doctrine, which ascribes to the executive the prerogative of judging and deciding, whether there be causes of war or not, in the obligations of treaties; notwithstanding the express provision in the constitution, by which the legislature is made the organ of the national will, on questions, whether there be or be not a cause for declaring war. If the answer to these arguments has imparted the conviction which dictated it, the reader will have pronounced that they are generally superficial, abounding in contradictions, never in the least degree conclusive to the main point, and not unfrequently conclusive against the writer himself: whilst the doctrine—that the powers of treaty and war, are in their nature executive powers, which forms the basis of those arguments, is as indefensible and as dangerous as the particular doctrine to which they are applied.

But it is not to be forgotten that these doctrines, though ever so clearly disproved, or ever so weakly defended, remain before the public a striking monument of the principles and views which are entertained and propagated in the community.

It is also to be remembered, that however the consequences flowing from such premises, may be disavowed at this time, or by this individual, we are to regard it as morally certain, that in proportion as the doctrines make their way into the creed of the government, and the acquiescence of the public, every power that can be deduced from them, will be deduced, and exercised sooner or later by those who may have an interest in so doing. The character of human nature gives this salutary warning to every sober and reflecting mind. And the history of government in all its forms and in every period of time, ratifies the danger. A people, therefore, who are so happy as to possess

the inestimable blessing of a free and defined constitution, cannot be too watchful against the introduction, nor too critical in tracing the consequences, of new principles and new constructions, that may remove the landmarks of power.

Should the prerogative which has been examined, be allowed, in its most limited sense, to usurp the public countenance, the interval would probably be very short, before it would be heard from some quarter or other, that the prerogative either amounts to nothing, or means a right to judge and conclude that the obligations of treaty impose war, as well as that they permit peace; that it is fair reasoning, to say, that if the prerogative exists at all, an operative rather than an *inert* character ought to be given to it.

In support of this conclusion, there would be enough to echo, "that the prerogative in this active sense, is connect-" ed with the executive in various capacities—as the organ " of intercourse between the nation and foreign nations—" as the interpreter of national treaties" (a violation of which may be a cause of war)—" as that power which is " charged with the execution of the laws, of which treaties " make a part—as that power, which is charged with *the* " *command and application of the public force.*"

With additional force, it might be said, that the executive is as much the *executor* as the *interpreter* of treaties; that if by virtue of the *first* character, it is to judge of the *obligations* of treaties, it is, by virtue of the *second*, equally authorized to carry those obligations into *effect.* Should there occur, for example, a *casus fœderis*, claiming a military cooperation of the United States, and a military force should happen to be under the command of the executive, it must have the same right, as *executor of public treaties*, to *employ* the public force, as it has in quality of *interpreter of public treaties* to decide, whether it ought to be *employed.*

The case of a treaty of peace would be an auxiliary to comments of this sort: it is a condition annexed to every treaty, that an infraction even of an important article, on one side, extinguishes the obligations on the other: and the immediate consequence of a dissolution of a treaty of peace is a restoration of a state of war. If the executive is "to decide on the obligation of the nation with regard to "foreign nations"—"to pronounce the *existing condition* "[in the sense annexed by the writer] of the nation with "regard to them; and to admonish the citizens of their ob- "ligations and duties, as founded upon *that condition* of "things"—"to judge what are the *reciprocal rights* and "obligations of the United States, and of all and each of "the powers at war;"—add, that if the executive, moreover, possesses all powers relating to war, *not strictly* within the power to *declare war*, which any pupil of political casuistry could distinguish from a mere *relapse* into a war that *had been declared:* with this store of materials, and the example given of the use to be made of them, would it be difficult to fabricate a power in the executive to plunge the nation into war, whenever a treaty of peace might happen to be infringed?

But if any difficulty should arise, there is another mode chalked out, by which the end might clearly be brought about, even without the violation of the treaty of peace; especially if the other party should happen to change its government at the crisis. The executive could *suspend* the treaty of peace *by refusing to receive an ambassador* from the *new* government; and the state of war *emerges of course.*

This is a sample of the use to which the extraordinary publication we are reviewing might be turned. Some of the inferences could not be repelled at all. And the least regular of them must go smoothly down with those who

had swallowed the gross sophistry which wrapped up the original dose.

Every just view that can be taken of this subject, admonishes the public of the necessity of a rigid adherence to the simple, the received, and the fundamental doctrine of the constitution, that the power to declare war, including the power of judging of the causes of war, is *fully* and *exclusively* vested in the legislature; that the executive has no right, in any case, to decide the question, whether there is or is not cause for declaring war; that the right of convening and informing congress, whenever such a question seems to call for a decision, is all the right which the constitution has deemed requisite or proper; and that for such, more than for any other contingency, this right was specially given to the executive.

In no part of the constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not to the executive department. Beside the objection to such a mixture of heterogeneous powers, the trust and the temptation would be too great for any one man; not such as nature may offer as the prodigy of many centuries, but such as may be expected in the ordinary successions of magistracy. War is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created; and it is the executive will, which is to direct it. In war, the public treasures are to be unlocked; and it is the executive hand which is to dispense them. In war, the honours and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered; and it is the executive brow they are to encircle. The strongest passions and most dangerous weaknesses of the human breast; ambi-

tion, avarice, vanity, the honourable or venial love of fame, are all in conspiracy against the desire and duty of peace.

Hence it has grown into an axiom that the executive is the department of power most distinguished by its propensity to war: hence it is the practice of all states, in proportion as they are free, to disarm this propensity of its influence.

As the best praise then that can be pronounced on an executive magistrate, is, that he is the friend of peace; a praise that rises in its value, as there may be a known capacity to shine in war: so it must be one of the most sacred duties of a free people, to mark the first omen in the society, of principles that may stimulate the hopes of other magistrates of another propensity, to intrude into questions on which its gratification depends. If a free people be a wise people also, they will not forget that the danger of surprise can never be so great, as when the advocates for the prerogative of war can sheathe it in a symbol of peace.

The constitution has manifested a similar prudence in refusing to the executive the *sole* power of making peace. The trust in this instance also, would be too great for the wisdom, and the temptations too strong for the virtue, of a single citizen. The principal reasons on which the constitution proceeded in its regulation of the power of treaties, including treaties of peace, are so aptly furnished by the work already quoted more than once, that I shall borrow another comment from that source.

"However proper or safe it may be in a government "where the executive magistrate is an hereditary monarch, "to commit to him the entire power of making treaties, it "would be utterly unsafe and improper to entrust that pow- "er to an elective magistrate of four years' duration. It "has been remarked upon another occasion, and the re- "mark is unquestionably just, that an hereditary monarch,

"though often the oppressor of his people, has personally "too much at stake in the government to be in any mate- "rial danger of being corrupted by foreign powers: but "that a man raised from the station of a private citizen to "the rank of chief magistrate, possessed of but a moderate "or slender fortune, and looking forward to a period not "very remote, when he may probably be obliged to return "to the station from which he was taken, might sometimes "be under temptations to sacrifice his duty to his interest, "which it would require superlative virtue to withstand. "An avaricious man might be tempted to betray the inter- "ests of the state to the acquisition of wealth. An ambi- "bitious man might make his own aggrandizement, by the "aid of a foreign power, the price of his treachery to his "constituents. The history of human conduct does not "warrant that exalted opinion of human virtue, which would "make it wise in a nation to commit interests of so deli- "cate and momentous a kind, as *those which concern its* "*intercourse* with the rest of the world, to the *sole* dispos- "al of a magistrate created and circumstanced as would "be a president of the United States." p. 418.*

I shall conclude this paper and this branch of the subject, with two reflections, which naturally arise from this view of the constitution.

The first is, that as the personal interest of an hereditary monarch in the government, is the *only* security against the temptation incident to the commitment of the delicate and momentous interests of the nation, which concern its intercourse with the rest of the world, to the disposal of a single magistrate, it is a plain consequence, that every addition that may be made to the *sole* agency and influence of the executive, in the intercourse of the nation with foreign nations, is an increase of the dangerous temptation to which

* Federalist, No. 75, written by Mr. Hamilton.

an *elective and temporary* magistrate is exposed; and an *argument* and *advance* towards the security afforded by the personal interests of an *hereditary* magistrate.

Secondly, as the constitution has not permitted the executive *singly* to conclude or judge that peace ought to be made, it might be inferred from that circumstance alone, that it never meant to give it authority, *singly*, to judge and conclude that war ought not to be made. The trust would be precisely similar and equivalent in the two cases. The right to say that war ought not to go on, would be no greater than the right to say that war ought not to begin. Every danger of error or corruption, incident to such a prerogative in one case, is incident to it in the other. If the constitution therefore has deemed it unsafe or improper in the one case, it must be deemed equally so in the other case.

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## No. V.

Having seen that the executive has no constitutional right to interfere in any question, whether there be or be not a cause of war, and the extensive consequences flowing from the doctrines on which such a claim has been asserted; it remains to be inquired, whether the writer is better warranted in the fact which he assumes, namely that the proclamation of the executive has undertaken to decide the question, whether there be a cause of war or not, in the article of guaranty between the United States and France, and in so doing has exercised the right which is claimed for that department.

Before I proceed to the examination of this point, it may not be amiss to advert to the novelty of the phraseology, as well as of the doctrines, espoused by this writer. The source from which the former is evidently borrowed, may enlighten our conjectures with regard to the source of the

latter. It is a just observation also that words have often a gradual influence on ideas, and, when used in an improper sense, may cover fallacies which would not otherwise escape detection.

I allude particularly to his application of the term *government* to the *executive authority alone*. The proclamation is "a manifestation of the sense of the *government*." "Why did not the *government* wait," &c. "The policy "on the part of the *government* of removing all doubt as "to *its own disposition*."* "It was of great importance, "that our citizens should understand as early as possible "the opinion entertained by the *government*," &c. "If in "addition to the rest, the early manifestation of *the views* "of the *government* had any effect *in fixing the public* "*opinion*," &c. The reader will probably be struck with the reflection, that if the proclamation really possessed the character, and was to have the effects, here ascribed to it, something more than the authority of *the government*, in the writer's sense of government, would have been a necessary sanction to the act; and if the term "government" be removed, and that of "president" substituted, in the sentences quoted, the justice of the reflection will be felt with peculiar force. But I remark only on the singularity of the style adopted by the writer, as showing either that the phraseology of a foreign government is more familiar to him than the phraseology proper to our own, or that he wishes to propagate a familiarity of the former in preference to the latter. I do not know what degree of disapprobation others may think due to this innovation of language; but I consider it as far above a trivial criticism, to observe that it is by no means unworthy of attention, whether viewed with an eye to its probable cause, or its apparent tendency.

* The writer ought not in the same paper, No. VII, to have said, "Had the president "announced his *own disposition*, he would have been chargeable with egotism, if not *pre-* "*sumption*."

"The government" unquestionably means, in the United States, the whole government, not the executive part, either exclusively, or *preeminently;* as it may do in a monarchy, where the splendour of prerogative eclipses, and the machinery of influence directs, every other part of the government. In the former and proper sense, the term has hitherto been used in official proceedings, in public discussions, and in private discourse. It is as short and as easy, and less liable to misapprehension, to say the executive, or the president, as to say the government. In a word, the new dialect could not proceed either from necessity, convenience, propriety, or perspicuity; and being in opposition to common usage, so marked a fondness for it justifies the notice here taken of it. It shall no longer detain me, however, from the more important subject of the present paper.

I proceed therefore to observe, that as a "proclamation," in its *ordinary* use, is an address to citizens or subjects only; as it is always understood to relate to the law ***actually in operation***, and to be an act *purely* and ***exclusively*** executive; there can be no implication in the *name* or the *form* of such an instrument, that it was meant principally for the information of foreign nations; far less that it related to an *eventual stipulation* on the subject ***acknowledged*** to be within the *legislative province.*

When the writer therefore undertook to engraft his new prerogative on the proclamation, by ascribing to it so unusual, and unimplied a meaning, it was evidently incumbent on him to show, that the *text* of the instrument could not be satisfied by any other construction than his own. Has he done this? No. What has he done? He has called the proclamation a proclamation of neutrality; he has put his own arbitrary meaning on that phrase; and has then proceeded in his arguments and his inferences, with as much confidence, as if no question was ever to be asked,

whether the term "neutrality" be in the proclamation; or whether, if there, it could justify the use he makes of it.

It has appeared from observations already made, that if the term "neutrality" was in the proclamation, it could not avail the writer in the present discussion; but the fact is, no such term is to be found in it, nor any other term, of a meaning equivalent to that, in which the term neutrality is used by him.

There is the less pretext in the present case, for hunting after any latent or extraordinary object, because an obvious and legal one is at hand, to satisfy the occasion on which the proclamation issued. The existence of war among several nations with which the United States have an extensive intercourse; the duty of the executive to preserve peace by enforcing its laws, whilst those laws continued in force; the danger that indiscreet citizens might be tempted or surprised by the crisis, into unlawful proceedings, tending to involve the United States in a war, which the competent authority might decide them to be at liberty to avoid, and which, if they should be judged not at liberty to avoid, the other party to the *eventual contract*, might be willing not to impose on them; these surely might have been sufficient grounds for the measure pursued by the executive: and being legal and rational grounds, it would be wrong, if there be no necessity, to look beyond them.

If there be any thing in the proclamation of which the writer could have made a handle, it is the part which declares, the *disposition*, the *duty*, and the *interest* of the United States, in relation to the war existing in Europe. As the legislature is the only competent and constitutional organ of the will of the nation; that is, of its disposition, its duty, and its interest, in relation to a commencement of war, in like manner as the president and senate *jointly*, not the president *alone*, are in relation to peace, after war has been

commenced—I will not dissemble my wish that a language less exposed to criticism had been preferred; but taking the expressions, in the sense of the writer himself, as analogous to the language which might be proper, on the reception of a public minister, or any similar occasion, it is evident that his construction can derive no succour even from this source.

If the proclamation, then, does not *require* the construction which this writer has taken the liberty of putting on it; I leave it to be decided, whether the following considerations do not forbid us to suppose, that the president could have intended by that act, to embrace and prejudge the legislative question, whether there was, or was not, under the circumstances of the case, a cause of war in the article of guaranty.

It has been shown that such an intention would have usurped the prerogative not vested in the executive, and even *confessedly* vested in another department.

In exercising the constitutional power of deciding a question of war, the legislature ought to be as free to decide, according to its own sense of the public good, on one side as on the other side. Had the proclamation prejudged the question on either side, and *proclaimed its decision to the world;* the legislature, instead of being as free as it ought, might be thrown under the dilemma, of either sacrificing its judgment to that of the executive; or, by opposing the executive judgment, of producing a relation between the two departments, extremely delicate among ourselves, and of the worst influence on the national character and interests abroad. A variance of this nature, it will readily be perceived, would be very different from a want of conformity to the *mere recommendations* of the executive, in the measure adopted by the legislature.

It does not appear that such a proclamation could have

even pleaded any call, from either of the parties at war with France, for an explanation of the light in which the guaranty was viewed. Whilst, indeed, no positive indication whatever was given of hostile purposes, it is not conceived, that any power could have decently made such an application; or, if it had, that a proclamation would have been either a satisfactory, or an honorable answer. It could not have been satisfactory, if serious apprehensions were entertained; because it would not have proceeded from that authority which alone could definitively pronounce the will of the United States on the subject. It would not have been honourable, because a private diplomatic answer, only, is due to a private diplomatic application; and to have done so much more, would have marked a pusillanimity and want of dignity in the executive magistrate.

But whether the executive was or was not applied to, or whatever weight be allowed to that circumstance, it ought never to be presumed, that the executive would so abruptly, so publicly, and so solemnly, proceed to disclaim a sense of the contract, which the other party might consider, and wish to support by discussion, as its true and reasonable import. It is asked, indeed, in a tone that sufficiently displays the spirit in which the writer construes both the proclamation and the treaty, "Did the executive stand "in need of the logic of a foreign agent to enlighten it as "to the duties or the interests of the nation; or was it bound "to ask his consent to a step, which appeared to itself "consistent with the former, and conducive to the latter? "The sense of treaties was to be learned from the treaties "themselves." Had he consulted his Vatel, instead of his animosity to France, he would have discovered, that however humiliating it might be to wait for a foreign logic, to assist the interpretation of an act depending on the national authority alone, yet in the case of a treaty, which is as

much the treaty of a foreign nation, as it is ours, and in which foreign duties and rights are as much involved as ours, the sense of the treaty, though to be learned from the treaty itself, is to be equally learned by both parties to it. Neither of them can have a right more than the other, to say what a particular article means; and where there is equality without a judge, consultation is as consistent with dignity as it is conducive to harmony and friendship. Let Vatel however be heard on the subject.

"The third general maxim, or principle, on the subject "of interpretation [of treaties] is: *that neither the one nor* "*the other of the interested or contracting powers has a* "*right to interpret the act or the treaty at its pleasure.* "For if you are at liberty to give my promise what sense "you please, you will have the power of obliging me to do "whatever you have a mind, contrary to my intention, and "beyond my real engagement: and reciprocally, *if I am* "*allowed to explain my promises as I please, I may render* "*them vain and illusive, by giving them a sense quite dif-* "*ferent from that in which they were presented to you,* "*and in which you must have taken them in accepting* "*them.*" Vatel, B. II, c. vii, § 265.

The writer ought to have been particularly sensible of the improbability that a precipitate and *ex parte* decision of the question arising under the guaranty, could have been intended by the proclamation. He had but just gone through the undertaking, to prove that the article of guaranty like the rest of the treaty is defensive, not offensive. He had examined his books and retailed his quotations, to show that the criterion between the two kinds of war is the circumstance of priority in the attack. He could not therefore but know, that according to his own principles, the question, whether the United States were under an obligation or not to take part in the war, was a *question of fact* whether

the first attack was made by France or her enemies. And to decide a question of fact, as well as of principle, without waiting for such representations and proofs as the absent and interested party might have to produce, would have been a proceeding contrary to the ordinary maxims of justice, and requiring circumstances of a very peculiar nature, to warrant it towards any nation. Towards a nation which could verify her claim to more than bare justice by our own reiterated and formal acknowledgments, and which must in her present singular and interesting situation have a peculiar sensibility to marks of our friendship or alienation, the impropriety of such a proceeding would be infinitely increased, and in the same proportion the improbability of its having taken place.

There are reasons of another sort which would have been a bar to such a proceeding. It would have been as impolitic as it would have been unfair and unkind.

If France meant not to insist on the guaranty, the measure, without giving any present advantage, would have deprived the United States of a future claim which may be of importance to their safety. It would have inspired France with jealousies of a secret bias in this country toward some of her enemies which might have left in her breast a spirit of contempt and revenge, of which the effects might be felt in various ways. It must in particular have tended to inspire her with a disinclination to feed our commerce with those important advantages which it already enjoys, and those more important ones which it anxiously contemplates. The nation that consumes more of the fruits of our soil than any other nation in the world, and supplies the only foreign raw* material of extensive use in the United States, would not be unnecessarily provoked by those who understand the public interest, and make it their study, as it is their duty to advance it.

*Molasses.

I am aware that the common-place remark will be interposed, that, "commercial privileges are not worth having, "when not secured by mutual interest; and never worth "purchasing because they will grow of themselves out of a "mutual interest." Prudent men, who do not suffer their reason to be misled by their prejudices, will view the subject in a juster light. They will reflect, that if commercial privileges are not worth purchasing, they are worth having without purchase; that in the commerce of a great nation, there are valuable privileges which may be granted or not granted, or granted either to this or that country, without any sensible influence on the interest of the nation itself; that the friendly or unfriendly disposition of a country, is always an article of moment in the calculations of a comprehensive interest; that some sacrifices of interest will be made to other motives, by nations as well as by individuals, though not with the same frequency, or in the same proportions; that more of a disinterested conduct, or of a conduct founded on liberal views of interest, prevails in some nations than in others; that as far as can be seen of the influence of the revolution on the genius and the policy of France, particularly with regard to the United States, every thing is to be hoped by the latter on this subject, which one country can reasonably hope from another. In this point of view, a greater error could not have been committed than in a step that might have turned the present disposition of France to open her commerce to us as far as a liberal calculation of her interest would permit, and her friendship towards us, and confidence in our friendship towards her, could prompt, into a disposition to shut it as closely against us as the united motives of interest, of distrust, and of ill will, could urge her.

On the supposition that France might intend to claim the guaranty, a hasty and harsh refusal before we were

asked, on a ground that accused her of being the aggressor in the war against every power in the catalogue of her enemies, and in a crisis when all her sensibility must be alive towards the United States, would have given every possible irritation to a disappointment which every motive that one nation could feel towards another and towards itself, required to be alleviated by all the circumspection and delicacy that could be applied to the occasion.

The silence of the executive, since the accession of Spain and Portugal to the war against France, throws great light on the present discussion. Had the proclamation been issued in the sense, and for the purposes ascribed to it, that is to say, as a declaration of neutrality, another would have followed, on that event. If it was the right and duty of the *government*, that is, the *president*, to manifest to Great Britain and Holland, and to the American merchants and citizens, his *sense*, his *disposition*, and his *views* on the question, whether *the United States were, under the circumstances of the case, bound or not, to execute the clause of guaranty, and not to leave it uncertain, whether the executive did or did not believe a state of neutrality* to be consistent with our treaties; the *duty*, as well as the right, prescribed a similar manifestation to all the parties concerned, after* Spain and Portugal had joined the other maritime enemies of France. The opinion of the executive with respect to a consistency or inconsistency of neutrality with treaties, in the *latter case*, could not be *inferred* from the proclamation in the former, because the *circumstances might be different:* the war in the *latter case*, might be *defensive* on the side of France, though offensive against her other enemies. Taking the proclamation in its proper sense, as reminding all concerned, that as the Uni-

* The writer is betrayed into an acknowledgment of this in his seventh number, where he applies his reasoning to Spain as well as to Great Britain and Holland. He had forgotten that Spain was not included in the proclamation.

ted States were at peace, (that state not being affected by foreign wars, and only to be changed by the legislative authority of the country,) the laws of peace were still obligatory, and would be enforced; and the inference is so obvious and so applicable to all other cases, *whatever circumstances* may distinguish them, that another proclamation would be unnecessary. Here is a new aspect of the whole subject, admonishing us in the most striking manner at once of the danger of the prerogative contended for, and the absurdity of the distinctions and arguments employed in its favour. It would be as impossible in practice, as it is in theory, to separate the power of judging and concluding that the obligations of a treaty do not impose war, from that of judging and concluding that the obligations *do impose war*. In certain cases, silence would proclaim the latter conclusion, as intelligibly as words could do the former. The writer indeed has himself abandoned the distinction in his seventh paper, by declaring expressly that the object of the proclamation would have been defeated "by leaving it uncertain, whether the executive did or *did* "*not* believe a state of neutrality to be consistent with our "treaties."

HELVIDIUS.